A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1901-1903.

WITH AN INDEX OF CASES;

BEING A SUPPLEMENT TO MR. J. V. WOODMAN'S CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836-1900.

COMPILED, UNDER THE ORDERS OF THE GOVERNMENT OF INDIA,

BY

F. G. WIGLEY,

OF THE INNER TEMPLE, BARRISTER-AT-LAW, AND SECRETARY TO THE BENGAL LEGISLATIVE COUNCIL.

CALCUTTA:

PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.

1906.

Indian Price Ten Rupees.
English Price Fifteen Shillings.

Agents for the Sale of Books published by the Superintendent of Government Printing, India, Calcutta.

IN GREAT BRITAIN.

E. A. Arnold, 41 & 43, Maddox Street, Bond Street, London, W.
Constable & Co, 16, James Street, Haymarket, London, W.
P. S. King & Son, 2 & 4, Great Smith Street, Westminster, London, W.
H. S. King & Co, 65, Cornhill, and 9, Pall Mall, London.
Kegan Paul, Trench, Trübner & Co, 43, Gerrard Street, Soho, London, W.
Bernard Quaritch, 15, Piccadilly, London, W.
Grindlay & Co, 54, Parliament Street, London, S. W
B. H. Blackwell, 50 and 51, Broad Street, Oxford.
Deighton, Bell & Co, Cambridge.

ON THE CONTINENT.

R. Friedländer & Sohn, 11, Carlstrasse, Berlin, W. N.
Otto Harrassowitz, Leipzig.
Karl W. Hiersemann, Leipzig.
Ernest Leroux, 28, Rue Bonaparte, Paris.
Martinus Nijhoff, The Hague, Holland.
Rudolf Haupt, Halle-A.-S. Germany.

IN INDIA.

[illegible]
Temple & Co., Madras
Combridge & Co, Madras.
A. R Pillai & Co, Trivandrum.
Thacker & Co, Ld., Bombay.
A. J. Combridge & Co, Bombay.
D B. Taraporevala, Sons & Co., Bombay
Radhabai Atmaram Sagoon, Bombay
Sunder Pandurang, Bombay.
Gopal Narayen & Co, Bombay.
N. B. Mathur, Superintendent, Nazair Kanun Hind Press, Allahabad.
Rai Sahib M. Gulab Singh & Sons, Mufid-i-Am Press, Lahore.
Superintendent, American Baptist Mission Press, Rangoon.
A. M. & J. Ferguson, Ceylon.
Evelyn, Hubert & Co., 149, Dhurrumtollah Street, Calcutta.*
P. Varadachary & Co, Madras *
T. K. Seetharama Aiyar, Kumbakonam.*
P. R. Rama Iyer & Co, Madras *
Manager, *East Coast News*, Vizagapatam.*
Superintendent, Basel Mission Book and Tract Depository, Mangalore *
The Mercantile Mission Branch, Calicut.*
Lala Debi Prasad, Vakil and Manager of Law Press, Cawnpore.*
Manager, "The Agra Medical Hall & Co-operative Association, Limited." (Successors to A. John & Co, Agra.)*
Manager of the Imperial Book Depôt, 63, Chandni Chauk Street, Delhi *
Managers, Educational Book Depôts, Nagpur and Jubbulpore.*
H. Liddell, Printer, etc., 7, South Road, Allahabad.*

---

* Agents for sale of the Legislative Department publications.

PREFACE.

THIS volume is published as a supplement to Mr. J. V. Woodman's Consolidated Digest of Indian Law Cases, 1836-1900. It contains the cases reported in the Indian Law Reports for 1901-1903, the Law Reports (Indian Appeals) for 1901 to 1903, and the Calcutta Weekly Notes for 1900-1903 (Vols. 5 to 7), except a small number of those cases which are included in Mr. Woodman's Digest.

2. The principal object kept in view in compiling this Volume has been to place the cases under the heads selected by Mr. Woodman for previous similar cases, this being obviously necessary for facilitating reference from one volume to another, and in view of the future amalgamation of the present volume with the preceding volumes. The next object in order of practical importance has been to insert numerous and full cross-references from one head to another. In other respects Mr. Woodman's plan of work has been followed, but some changes have been made which it is hoped may prove useful. They are as follow :—

(1) for every case which is digested in this volume, and for many which are referred to in the volume, the year in which the case was decided is entered;

(2) wherever a case digested in this volume is published in two or more Reports (*e.g.*, I. L. R., Calc.; C. W. N.; and L. R., I. A.), the Report from which the head-note is taken is noted first, and the prefix s.c. is inserted before the references to the other Reports;

(3) words and phrases which are expounded in the Reports are entered in a separate list, in alphabetical order, under the head "Words";

(4) short lines have been prefixed to the several entries, to indicate that they fall under a major or minor head; longer lines have been prefixed to indicate that entries fall also under the short head-note which is printed in small

antique type at the beginning of the first of a series of preceding entries;

(5) where cross-references are made to different minor heads of the same major head, the major head has been printed once only, the minor heads being printed in line under it.

F. G. WIGLEY.

CALCUTTA;
The 9th November, 1905

CONTENTS.

HIGH COURT, CALCUTTA, 1901-1903.

CHIEF JUSTICE.

The Honourable SIR FRANCIS W. MACLEAN, KT., K.C.I.E

PUISNE JUDGES.

The Honourable SIR HENRY T. PRINSEP, KT.
" MR. C. M. GHOSE.
" " G. D. BANERJEE, D L.
" " AMEER ALI, C.I.E.
" " C. H HILL.
" " R. F. RAMPINI.
" " S. G. SALE.
" " J. F. STEVENS.
" " J. STANLEY. (*Resigned, August 5, 1901.*)
" " R. HARINGTON.
" " J. PRATT.
" " C. M. W. BRETT.
" " H. L STEPHEN.
" " G. S. HENDERSON.
" " B. L. GUPTA. (*Offg*)
" " F. B. TAYLOR (*Offg*)
" " S. C. MITRA. (*Offg.*)
" " B. G. GEIDT. (*Offg.*)
" " A. P. HANDLEY. (*Offg.*)
" " F. E. PARGITER. (*Offg.*)

ADVOCATES-GENERAL.

The Honourable MR. J. T. WOODROFFE.
" " L. P. PUGH. (*Offg.*)

STANDING COUNSEL.

The Honourable MR P. O'KINEALY. (*Retired, March 31, 1903.*)
" " J G WOODROFFE. (*Retired, December 23, 1903.*)
" " S P SINHA

HIGH COURT, MADRAS, 1901-1903.

CHIEF JUSTICES.

The Honourable SIR CHARLES ARNOLD WHITE, KT.
" SIR S. SUBRAHMANIA AYYAR, B.L., K.C.I.E. (*Offg*)

PUISNE JUDGES.

The Honourable MR H. H SHEPHARD (*Retired, July, 13, 1901.*)
" SIR S SUBRAHMANIA AYYAR, B.L., K.C I.E, DIWAN BAHADUR
" SIR J A. DAVIES, KT.
" MR. R. S. BENSON, M.A., LL.B.
" MR. H. T. BODDAM
" SIR V. BHASHYAM AYYANGAR, KT, B.A, B.L., C.I.E
" MR L MOORE. (*Offg.*)
" MR. S. RUSSELL, B.A., LL.B. (*Offg*)

ADVOCATE GENERAL

The Honourable MR. J E. P. WALLIS

HIGH COURT, BOMBAY, 1901-1903.

CHIEF JUSTICES.

The Honourable Sir Lawrence H. Jenkins, Kt., K.C.I.E.
" Mr. E. T. Candy, C.S.I. (*Offg.*)
" " B. Tyabji. (*Offg.*)

PUISNE JUDGES.

The Honourable Mr. E. T. Candy, C.S.I.
" " M. G. Ranade. (*Died, January 16, 1901.*)
" " B. Tyabji.
" " E. M. H. Fulton.
" " L. P. Russell.
" " W. H. Crowe.
" " N. G. Chandavarkar.
" " G. C. Whitworth. (*Offg.*)
" " M. H. Starling. (*Offg.*)
" " H. Batty.
" " H. F. Aston.
" " V. J. Kirtikar. (*Offg.*)
" " G. Jacob. (*Offg.*)

ADVOCATE-GENERAL.

The Honourable Mr. B. Lang. (*Offg.*)
" " B. Scott.

HIGH COURT, NORTH-WESTERN PROVINCES, 1901-1903.

CHIEF JUSTICES.

The Honourable Sir Arthur Strachey. (*Died, May 14, 1901.*)
" Sir John Stanley, Kt., K.C.
" Mr. G. E. Knox. (*Offg.*)

PUISNE JUDGES.

The Honourable Mr. G. E. Knox.
" " H. F. Blair.
" " P. C. Banerji.
" " W. R. Burkitt.
" " R. S. Aikman.
" " E. M. Des C. Chamier. (*Offg.*)

MEMBERS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, 1901-1903.

Earl of Halsbury, Lord Chancellor.
Duke of Devonshire.
Earl of Rosebery.
Duke of Richmond and Gordon.
The Marquis of Ripon.
Earl of Cranbrook.
Earl Spencer.
Earl of Kimberley.
Lord Hobhouse.
Lord Ashbourne.
Lord Macnaghten.
Lord Field.
Lord Shand.
Lord Davey.
Lord James of Hereford.
Lord Brampton.
Lord Robertson.
Lord Lindley.
Lord Alverstone.
Sir Richard Couch.
Sir Edward Fry.
Sir Samuel Way, Bart.
Sir Henry De Villiers, K.C.M.G.
Sir Henry Strong.
Sir Ford North.
Sir Andrew Scoble
Sir Arthur Wilson
Sir John Bonser

TABLE OF REPORTS DIGESTED.

Reports.	Period.	No. of Vols.	In what Court.	Abbreviation.
Indian Law Reports—				
Calcutta Series, Vols. 28 to 30.	1901 to 1903	3	High Court, Calcutta, and Privy Council.	I. L. R., Calc.
Madras Series, Vols. 24 to 26.	1901 to 1903	3	High Court, Madras, and Privy Council.	I. L. R., Mad.
Bombay Series, Vols 25 to 27.	1901 to 1903	3	High Court, Bombay, and Privy Council.	I. L. R., Bom.
Allahabad Series, Vols 23 to 25.	1901 to 1903	3	High Court, North-Western Provinces, Allahabad, and Privy Council.	I. L. R., All.
Calcutta Weekly Notes Vols. 5 to 7.	1900 to 1903	3	High Court, Calcutta, and Privy Council.	C. W. N.
Law Reports, Indian Appeals, Vols. 28 to 30.	1901 to 1903	3	Privy Council . .	L. R., I. A.

NOTE.—Several cases of 1900 and 1901, which are reported in the above-noted volumes, are included in Mr. Woodman's Consolidated Digest published in 1901-1902, and are accordingly omitted from the present volume.

TABLE

OF

CASES IN THE DIGEST.

Name of Case.	Volume and Page.	Column of Digest.
A		
Abalu Das *v.* King-Emperor (1901)	I. L. R., 28 Calc., 571: 5 C. W. N., 708	755
Abdul Azeez Sahib *v.* Cuddapah Municipality (1902)	I. L. R., 26 Mad., 475	688
Abdul Gafur *v.* Albyn (1903)	I. L. R., 30 Calc., 713: 7 C. W. N., 821	85
Abdul Gani *v.* Nandlal (1902)	I. L. R., 30 Calc., 15	511
Abdul Ghafur *v.* Raja Ram (1901)	I. L. R., 23 All., 252	708
Abdul Ghani (1903)	6 C. W. N., 640	280
———— *v.* Emperor (1902)	I. L. R., 29 Calc., 412	684
———— *v.* Babni (F.B., 1902)	I. L. R., 25 All., 256	1148
Abdul Hakim *v.* Latifunnessa Khatun (1903)	I. L. R., 30 Calc., 532: 7 C. W. N., 550	934
Abdul Hamid Mian *v.* Kiran Chandra Roy (1903)	7 C. W. N., 849	350
Abdul Karim Fateh Mahomed *v.* Municipal Officer, Aden (1903)	I. L. R., 27 Bom., 575	1114
[illegible]	6 C. W. N., 314	989
[illegible]	I. L. R., 30 Calc., 425	1023
[illegible]	I. L. R., 29 Calc., 738	690, 1186
[illegible]	I. L. R., 23 All., 260	872, 1191
[illegible]	5 C. W. N., 447	1158
Abdul Wahed *v.* Amiran Bibi (1902)	I. L. R., 30 Calc., 101: 6 C. W. N., 422	921
[illegible]	I. L. R., 26 Mad., 156	389
[illegible]	I. L. R., 25 All., 334	989
[illegible]	I. L. R., 29 Calc., 459	1003
[illegible]	6 C. W. N., 629	348
[illegible]	6 C. W. N., 37	1038
[illegible]	I. L. R., 24 All., 190	686
[illegible]	I. L. R., 26 Mad., 654	832
[illegible]	I. L. R., 25 Mad., 7	359
Adams *v.* Emperor (1903)	I. L. R., 26 Mad., 607	393, 1199 (twice)
Adhar Mani Dassi *v.* Monmotha Nath Bose (1901)	6 C. W. N., 279	164
Adhar Midday *v.* Empress	5 C. W. N., 391	1159
Adhar Singh *v.* Sheo Prasad (1898)	I. L. R., 23 All., 209	163
Adhore Chandra Dey *v.* Ambika Churn Roy (1902)	6 C. W. N., 886	763, 1153

Name of Case	Volume and Page.	Column of Digest.
[illegible] (1902)	I. L. R., 24 All., 346	924
[illegible]	I. L. R., 24 All., 304	1113
[illegible]	I. L. R., 24 All, 475	1016
[illegible]	7 C. W. N., 457	65, 320, 321
[illegible]	I. L. R., 28 Calc., 567	260
Amiruddi Bepari v. Bahadoor Khan (1903)	I. L. R., 30 Calc., 977 : 7 C. W. N., 878	477
[illegible] (1902)	I. L. R., 24 All., 483	462
[illegible]	I. L. R., 23 All, 448	641
[illegible]	5 C. W. N., 503	398, 1193
[illegible] (F.B., 1901)	I. L. R., 28 Calc, 382 : 5 C. W. N., 474	114
Amriteshwari Debi v. Darpa Narain Das (1903)	7 C. W. N., 558	845
Amrito Lal Mukherjee v. Ram Chandra Roy (1901)	I. L. R, 29 Calc, 60	1068
Ananda Das v. Rutnakar Panda (1903)	7 C. W. N., 572	983
Anant Ram v. Channu Lal (1903)	I. L. R, 25 All., 378	791
Anesh Mollah v. Ejaharuddi Mollah (1901)	I. L. R., 28 Calc., 446 : 5 C. W. N., 428	847
Angammal v. Venkata Reddy (1902)	I. L. R., 26 Mad, 509	443
Anklesvar Municipality v. Rikhavchand Kapurchand (1900)	I. L. R, 25 Bom, 315	124, 1204
Annada Persad Pal v. Khoda Box Mallik (1902)	6 C. W. N., 882	856
Annada Sundari Chandalini v. Kebulram Changa (1903)	7 C. W. N., 542	117
Annamalai Chetty v. Murugasa Chetty (1903)	I. L. R, 26 Mad., 544 : L. R., 30 I. A., 220 ; 7 C. W. N., 754	532
——— v. Veerabadram Chetty (1902)	I. L. R., 26 Mad., 111	512
Annapaganda Tammanganda v. Sangadigyapa (F.B., 1901)	I. L. R, 26 Bom., 221	612
Annasami Pillai v. Ramakrishna Mudaliar (1900)	I. L. R, 24 Mad., 219	14
Annoda Mohun Roy Chowdhri v. Bhuban Mohini Debi (1901)	I. L R, 28 Calc, 546 : 5 C. W N, 489 : L. R., 28 I A., 71	784
Annoda Prosad Ghose v. Rajendra Kumar Ghose (1901)	I. L. R., 29 Calc, 223 . 6 C. W. N., 375	1005, 1211
Antone v. Mahadev Anant (1900)	I. L. R., 25 Bom, 85	1058
Apaji Patil v. Apa (1902)	I. L. R, 26 Bom., 735	489
Appa Rao v. Krishna Ayyangar (1901)	I. L R, 25 Mad, 537	372
——— v. Sobhanadri Rao (1899)	I. L R., 24 Mad., 158	831
Appasami Pillai v. Somasundra Mudaliar (1902)	I. L. R., 26 Mad, 437	693, 811, 1194
[illegible]	I. L. R., 25 Mad., 674	865
[illegible]	7 C. W. N., 843	1098
[illegible]	I. L. R., 24 Mad., 672	656
[illegible]	I. L. R., 25 Bom, 593	623
[illegible]	7 C W N, 243	1021
[illegible]	I. L. R., 25 Mad., 543	1145
[illegible] (1900)	I. L. R, 24 Mad, 255	436
[illegible]	I. L. R., 26 Mad., 188	1117, 1183
[illegible]	I. L R, 24 Mad., 22	120, 1181
[illegible]	I. L. R, 30 Calc., 360	1016, 1159
[illegible] kata Nara- [illegible]	I. L. R., 26 Mad., 237	37
Asghar Ali Khan v. Khurshed Ali Khan (1901)	I. L. R., 24 All., 27 : L. R., 28 I. A, 227	247, 625, 1193

Name of Case.	Volume and Page.	Column of Digest.
Ashgar Reza Khan *v.* Mahomed Mehdi Hossein Khan (1903)	L. R., 30 I. A., 71; 7 C. W. N., 482; I. L. R., 30 Calc., 556	315, 966
Ashrafuddin Ahmed *v.* Bepin Behari Mullick (1902)	I. L. R., 30 Calc., 407	495
Ashutosh Nath Roy *v.* Abdool (1901)	I. L. R, 28 Calc., 676	111
Atmaram *v.* Umedram (1901)	I. L. R, 25 Bom., 616	330
Atul Chunder Mookerjee *v.* Soshi Bhusan Mullick (1901)	I. L. R., 29 Calc., 63: 6 C. W. N., 215	88
Ayuthala *v.* Dayumma (1900)	I. L. R., 24 Mad., 233	629 (twice)
Ayen Mahmad Akand *v.* King-Emperor (1901)	6 C. W. N, 488	214
Ayyadorai Pillai *v.* Solai Ammal (1901)	I. L. R., 24 Mad., 405	602
Aziz-un-Nissa *v.* Tassaduq Husain Khan (1901)	5 C. W. N., 569; I. L. R., 23 All., 324: L. R., 28 I. A., 65	596, 1177

B

Name of Case.	Volume and Page.	Column of Digest.
Babaluddin Mahomed *v.* Dwarka Nath Singha (1900)	I. L. R., 28 Calc., 166	105
Bachchu Singh *v.* Secretary of State for India in Council (1902)	I. L. R., 25 All., 187	183
Badam *v.* Nathu Singh (1902)	I. L. R., 25 All., 194	35
Bafatun *v* Bilaiti Khanum (1903)	I. L. R., 30 Calc, 683	690
Bahadur Ali *v.* Nur Mahomed (1902)	7 C. W. N., 206	209
Bahadur Singh *v.* Mohar Singh (1901)	L. R., 29 I. A., 1; I. L. R., 24 All., 94; 6 C. W. N., 169	1103
Bahal Rai *v.* Sumer Chand (1903)	I. L. R., 25 All, 493	514, 1204 (twice)
[illegible] 01)	I. L. R., 29 Calc., 306	26
[illegible]	I. L. R., 26 Bom, 632	1164
[illegible]	I. L. R., 26 Bom., 445	434, 442
[illegible]	I. L. R., 26 Bom., 203	4
[illegible] (1902)	I. L. R., 26 Bom., 374	875
[illegible]	I. L. R., 26 Bom., 782	605
[illegible]	I. L. R., 25 Bom., 470	411
[illegible]	I. L. R., 25 Bom., 263	451
[illegible] under Ghose [illegible]	I. L. R, 29 Calc., 243: 6 C. W. N., 290	682
Baidya Nath Bahara *v.* Dhon Krishna Sirkar (1900)	5 C. W. N., 515	1069
Baidya Nath Majumdar *v.* Nibaran Chunder Gope	I. L. R, 30 Calc., 93: 6 C. W. N, 471	920
Baij Nath Lohea *v.* Binoyendra Nath Palit (1901)	6 C. W. N., 5	83, 1024
Baij Nath Ram Marwari *v.* Burgess (1900)	5 C. W. N., 255	148
[illegible]	6 C. W. N., 197	991
[illegible]	6 C. W. N., 372	581
[illegible]	6 C. W. N., 840	388
[illegible]	I. L. R., 30 Calc., 490 n	327
Baistab Charan Shaha *v.* Emperor (1902)	I. L. R., 30 Calc., 95: 6 C. W. N., 511	1214
Bakatram Nanuram *v* Kharsetji Jivajishet (1903)	I L. R., 27 Bom., 560	626
Baktu Singh *v.* Kali Prasad (1900)	I. L. R., 28 Calc, 297	1117
Bal Gangadhar Tilak—*In re* (1902)	I. L. R., 26 Bom., 785	869, 982
——— *v.* Sakwarbai (1902)	I. L. R., 26 Bom., 792	890, 1179
Bala *v.* Shiva (1902)	I. L. R., 27 Bom., 271	741

Name of Case.	Volume and Page.	Column of Digest.
Balabai v. Ganesh Shankar Pandit (1902)	I. L. R., 27 Bom., 162	796
Balabux v. Rukhmabai (1903)	I. L. R., 30 Calc., 725 : 7 C. W. N., 642 : L. R., 30 I. A., 130	463
Balai Mahto v. Nobin Manjhi (1902)	7 C. W. N., 29	846
Balaji Narayan Gokhale v. Nana Bin Babaji Ghatge (1903)	I. L. R., 27 Bom., 287	68
Balaji Raghunath Phadke v. Ramchandra Kashi Patkar (1902)	I. L. R., 27 Bom., 262	569
Balaji Ramchandra Deshpande v. Datto Ramchandra (1902)	I. L. R., 27 Bom., 75	419
Balambal—*In re* (1902)	I. L. R., 26 Mad., 463	5, 822, 1187
[illegible]	I. L. R., 25 Bom., 74	966
[illegible]	I. L. R., 24 All., 514	873
[illegible]	I. L. R., 23 All., 495	240, 1057
[illegible]	I. L. R., 23 All., 1	746
Balkishen Das v. Ram Narain Sahu (1903)	I. L. R., 30 Calc., 738 : 7 C. W. N., 578 : L. R., 30 I. A., 139	458
Balkishanji Maharaj v. Mithu Lal (1902)	I. L. R., 25 All., 212	376
Balkrishna v. Govind Babaji Agashe (1902)	I. L. R., 26 Bom., 617	1071
Balmakund v. Dalu (F.B., 1903)	I. L. R., 25 All., 498	1147
Balshet v. Dhondo Ramkrishna (1901)	I. L. R., 26 Bom., 33	318, 725, 1208
Balvant Babaji Dhondge v. Hirachand Gulabchand Gujar (1903)	I. L. R., 27 Bom., 334	1011
Balwant Singh v. Secretary of State for India (1903)	I. L. R., 25 All., 527 : L. R., 30 I. A., 172	537
Banarasi Pershad v. Kashi Krishen Narain (1900)	5 C. W. N., 193 : L. R., 28 I. A., 11 : I. L. R., 23 All., 227	54, 1200
——— v. Makhan Roy (1903)	I. L. R., 30 Calc., 947	113
Banarsi Prasad v. Ram Narain (1903)	I. L. R., 25 All., 287 ; 7 C. W. N., 514	731
[illegible] (1901)	[illegible]	866
[illegible]	[illegible]	531, 1181
[illegible]	[illegible]	55, 1194
[illegible]	[illegible] 33	330
[illegible]	[illegible]	900
[illegible]	[illegible] 2	363, 437
[illegible]	[illegible]	750
Baqar Ali Khan v. Anjuman Ara Begam (1903)	I. L. R., 25 All., 236 ; L. R., 30 I. A., 94. 7 C. W. N., 465	362, 688
Baraoora Tea Company v. Secretary of State for India in Council (1901)	I. L. R., 28 Calc., 685	540
Barlow v. Chuni Lall Neoghi (1901)	I. L. R., 28 Calc., 209	348
Baroda Kanta Bose v. Chunder Kanta Ghose (1902)	I. L. R., 29 Calc., 682 : 6 C. W. N., 706	1022
Barot Naran v. Barot Jesang (1900)	I. L. R., 25 Bom., 26	631
Baru Mal v. Niadar (1901)	I. L. R., 23 All., 360	536, 969
Basanta Baistabi v. Emperor (1901)	5 C. W. N., 566	771
Basavayya v. Syed Abbas Saheb (1900)	I. L. R., 24 Mad., 20	196

Name of Case.	Volume and Page.	Column of Digest.
Basudeb Giri v. Brojo Mohan Jana (1902)	7 C. W. N., 54	163, 171, 348
Batakala Pottiavadu (1902)	I. L. R., 26 Mad., 49	859
Batul Begam v. Mansur Ali Khan (1901)	I. L. R., 24 All., 17: L. R., 28 I. A., 248; 5 C. W. N., 888	617, 1176, 1202
Bavu Sahib v. District Judge of Madura (1903)	I. L. R., 26 Mad., 596	586
Beauchamp v. Moore (1902)	I. L. R., 26 Mad., 43	212, 317, 1202
Becha v. Mothina (1900)	I. L. R., 23 All., 86	453
	I. L. R., 24 All., 443	977
	I. L. R., 24 All., 499	458
	I. L. R., 24 All., 138	952
	I. L. R., 24 All., 461	1127
	I. L. R., 27 Bom., 563	1065
	6 C. W. N., 196	793
	I. L. R., 29 Calc., 548	1022, 1185
	I. L. R., 24 All., 119	691
	I. L. R., 26 Mad., 471	1047
	I. L. R., 25 Mad., 457	665
Bellew v. Parker (1903)	7 C. W. N., 521	277
Benode Behari Mookerjee v. Raj Narain Mitter (1903)	I. L. R., 30 Calc., 699; 7 C. W. N., 651	598, 820
Benode Lal Pakrashi v. Brajendra Kumar Shaha (1902)	I. L. R., 29 Calc., 810; 6 C. W. N., 838	377
	7 C. W. N., 80	254, 868
	6 C. W. N., 386	1025, 1179
	6 C. W. N., 912	590
	6 C. W. N., 242	357
Beni Madhub Kurmi v. Kumud Kumar Biswas (1902)	I. L. R., 30 Calc., 123; 6 C. W. N., 799	208, 1100, 1212
Beni Madhub Mitter v. Preonath Mandal (1900)	I. L. R., 28 Calc., 303; 5 C. W. N., 268	68
Beni Pershad Koeri v. Goberdhan Koeri (1902)	6 C. W. N., 823	108
——— v. Raj Kumar Chowbey (1902)	6 C. W. N., 589	106
Beni Prasad Kuari v. Batulan Bibi (1901)	I. L. R., 23 All., 283	41, 1192
——— v. Dharaka Rai (1901)	I. L. R., 23 All., 277	603, 763
——— v. Dukkhi Rai (1901)	I. L. R., 23 All., 270	761, 1176
	I. L. R., 23 All., 282	533
	5 C. W. N., 900	849
	7 C. W. N., 218	616
	5 C. W. N., 32	137
	I. L. R., 25 All., 421	870
	I. L. R., 23 All., 429	749
Bhagwan Kaur v. Bose (1903)	7 C. W. N., 895: L. R., 30 I. A., 249	890, 1190
	I. L. R., 25 All., 545	692
	I. L. R., 25 Bom., 202	1121
	I. L. R., 23 All., 67	1105
Bhai Lal Chowdhry v. Emperor (1902)	I. L. R., 29 Calc., 417; 6 C. W. N., 680	6
	6 C. W. N., 63	195
	6 C. W. N., 926	211
	I. L. R., 30 Calc., 1066	1052
	I. L. R., 24 All., 160	453

D

E

F

Name of Case.	Volume and Page.	Column of Digest.
[illegible]	I. L. R., 25 All., 67	625
[illegible]	7 C. W. N., 180	67, 1191
[illegible]	I. L. R., 26 Bom., 88	733
[illegible]	6 C. W. N., 161	857
[illegible] of Bengal (1901)	6 C. W. N., 321	20, 1164, 1189
[illegible] Dalal (1903)	I. L. R., 27 Bom., 515	568
[illegible]	6 C. W. N., 575	575
[illegible]	6 C. W. N., 916	571, 1195
[illegible]	I. L. R., 30 Calc., 901	254
[illegible] Sen (1900)	5 C. W. N., 234	841
[illegible] Chowdhry (1903)	I. L. R., 30 Calc., 453: 7 C. W. N., 402	916
Fazlur Rahim Abu Ahmud v. Mahomed Obedul Azim Abu Ahsan (1903)	I. L. R., 30 Calc., 666: 7 C. W. N., 926	688
Fernandez v. Wray (1900)	I. L. R., 25 Bom., 176	529, 1187
Fink v. Corporation of Calcutta (1903)	I. L. R., 30 Calc., 721: 7 C. W. N., 706	918, 1201
First grade Pleader—In the matter of a (1900)	I. L. R., 24 Mad., 17	586
Frizoni v. Ram Narain Singh (1901)	5 C. W. N., 426	40
Fuzlur Rahman v. Krishna Prasad (1902)	I. L. R., 29 Calc., 614	1075, 1191

G

Name of Case.	Volume and Page.	Column of Digest.
Gaekwar Sarkar of Baroda v. Gandhi Kachrabhai (1903)	I. L. R., 27 Bom., 344: L. R., 30 I. A., 60: 7 C. W. N., 393	910
Ga[illegible]	I. L. R., 26 Bom., 159	1150
Ga[illegible]	I. L. R., 25 Bom., 243	379
Ga[illegible] (1903)	I. L. R., 27 Bom., 610	439
Ganga Baksh Singh v. Dalip Singh (1901)	5 C. W. N., 781: I. L. R., 24 All., 13: L. R., 28 I. A., 181	781
[illegible]	6 C. W. N., 614	105, 1067
[illegible]	I. L. R., 25 All., 26	513
[illegible]	I. L. R., 23 All., 502	624
[illegible]	I. L. R., 30 Calc., 617	39
[illegible]	I. L. R., 30 Calc., 953	735
[illegible] (1903)	I. L. R., 30 Calc., 576	545
[illegible]	I. L. R., 25 All., 371	1015
[illegible]	I. L. R., 26 Bom., 720	632
[illegible]	6 C. W. N., 698	803
[illegible]	I. L. R., 29 Calc., 33	155
[illegible]	I. L. R., 26 Bom., 360	577, 863
[illegible]	I. L. R., 25 All., 183	1113, 1192
[illegible]	I. L. R., 30 Calc., 458	1064
[illegible]	I. L. R., 27 Bom., 307	409, 1077
[illegible]	I. L. R., 29 Calc., 619	328
[illegible]	6 C. W. N., 785	263
[illegible]	7 C. W. N., 452	916

Name of Case	Volume and Page.	Column of Digest.
Gopal Ganesh Abhyankar *v.* Ramchandra Sadashiv	I. L. R., 26 Bom., 597	3
[illegible]	6 C. W. N., 651	445
[illegible]	I. L. R., 29 Calc., 148	570
Gopal Mondul *v.* Pudmanund Singh (1902)	6 C. W. N., 825; I. L. R., 29 Calc., *707*; L. R., *29* I. A., 196	*970*
Gopala Ayyar *v.* Arunachalam Chetty (1902)	I. L. R., 26 Mad., 85	13, 1097, 1177
[illegible] (1903)	I. L. R., 26 Mad., 604	155
[illegible]	5 C. W. N., 376	914
[illegible]	I. L. R., 30 Calc., 693	683
[illegible]	I. L. R., 26 Bom., 267	20
[illegible] *v.* [illegible]	*I. L. R., 26 Bom., 419*	*1138*
Gordhanlal *v.* Darbar Shri Surajmalji (1902)	I. L. R., 26 Bom., 504	557
Gordon Sims *v.* Johurry Lal (1901)	5 C. W. N., 563	855
Gourhari Gope *v.* Alay Gopini (1902)	I. L. R., 29 Calc., 724: 6 C. W. N., 713	*50*
Gouri Kant Burman *v.* Damodar Das Burman (1900)	5 C. W. N., 90	494
[illegible] (1902)	I. L. R., 26 Mad., 537	1124
[illegible]	I. L. R., 27 Bom., 130	*1036, 1037*
[illegible] Jakhadi (1901)	I. L. R., 25 Bom., 494	*789, 1017*
Govind Hanmant—*In re* (1900)	I. L. R., 25 Bom., 48	210
[illegible]	*I. L. R., 25 Bom., 161*	*938*
[illegible]	I. L. R., 29 Calc., 740	364
[illegible]	I. L. R., 28 Calc., 370	94
[illegible]	*I. L. R., 24 Mad., 43*	*1072, 1145*
[illegible]	I. L. R., 26 Mad., 592	523, 1035
[illegible]	I. L. R., 28 Calc., 790	916
[illegible]	I. L. R., 25 Bom., 189	965
[illegible]	I. L. R., 24 All., 464	34, 1177
[illegible]	I. L. R., 25 Bom., 523	1091
[illegible]	I. L. R., 25 Bom., 244	318
[illegible]	I. L. R., 26 Bom., 128	358, 611
[illegible]	*I. L. R., 23 All., 219*	*225, 1168*
[illegible]	I. L. R., 30 Calc., 581	1090
[illegible]	I. L. R., 26 Mad., 339	459, 973
[illegible]	*5 C. W. N., 880*	*947*
[illegible]	I. L. R., 28 Calc., 424	863
Guru Charan Shaha *v.* Girija Sundari Dassi (1902)	I. L. R., 29 Calc., 887: 7 C. W. N., 112	1037
Gururajammah *v.* Venkatakrishnama Chetti (1901)	I. L. R., 24 Mad., 350	954
Gurusami Chetti *v.* Krishnasami Naikar (1901)	I. L. R., 24 Mad., 419	810
Guruvajamma *v.* Venkatakrishnama Chetti (1900)	I. L. R., 24 Mad., 34	261
Guzzala Hanuman *v.* Emperor (1902)	I. L. R., 26 Mad., 467	147, 296
Gya Singh *v.* Mohamed Soliman (1901)	5 C. W. N., 864	1118

H

Name of Case	Volume and Page.	Column of Digest.
Habib Bakhsh *v.* Baldeo Prasad (1901)	I. L. R., 23 All., 167	942
Habib-un-Nissa *v.* Munawar-un-Nissa (1903)	I. L. R., 25 All., 629	53

Name of Case.	Volume and Page.	Column of Digest.
Ismail Khan Mahomed *v.* Kali Krishna Mondol (1901)	6 C. W. N., 134	565, 577
——— *v. Nilratan Mondol (1902)*	*6 C. W. N., 352*	565
Isrur Singh *v.* Bergmann (1903)	I. L. R., 30 Calc., 627	867
Isvar Boidyanath Jeo v. Peary Churn Dey (1902)	I. L. R, 29 Calc., 470 : 6 C. W. N., 728	84
Iswar Chunder Chowdhry *v.* Ambica Churn Majumdar *(1901)*	5 C. W. N., 544	852
Iswar Chunder Santra *v.* Satish Chunder Giri (1903)	I L. R., 30 Calc., 207 ; 7 C. W. N., 126	881, 882, 1071
Ittappan Kuthiravattat Nayer *v.* Nanu Sastri (1902)	I. L. R., 26 Mad., 34	613

J

Name of Case.	Volume and Page.	Column of Digest.
Jadu Mani Boistabee *v.* Ram Kumar Chakravarti (1902)	I. L. R., 29 Calc., 239	1167
Jadu Nandan Goswami *v.* Ashutosh Goswami (1902)	I. L. R., 29 Calc., 688	204
Jadu Nath Mahta *v.* Jagadish Chandra Deb (1902)	7 C. W. N., 423	285
Jadu Nath Prasad *v.* Jagamohan Das (1903)	I. L. R., 25 All, 541	371
Jafar *v.* Kamalini Debi (1900)	5 C. W. N., 150 : I. L. R., 28 Calc., 238	373, 610, 1203
Jafar Khan *v.* Ghulam Muhammad (1903)	I. L. R., 25 All., 282	*762, 956*
Jafri Begum *v.* Syed Ali Raza (1901)	5 C. W. N., 585 : I. L. R., 23 All., 383 : L. R., 28 I. A., 111	69
Jagadindra Nath Roy *v.* Secretary of State for India (1902)	I. L. R., 30 Calc., 291 : 7 C. W. N., 193 : L. R., 30 I. A., 44	349
Jagannadha Rao v. Kamaraju (1900)	*I. L. R., 24 Mad., 284*	544, 1192, 1196
Jagannadha Rao Pantulu Garu *v.* Nidamarti Ummayya (1902)	I. L R, 26 Mad., 183	675
Jagannath Khan *v.* Brojonath Pal (1901)	I. L. R., 29 Calc., 580	657
[illegible]	I. L R, 29 Calc., 247	106
[illegible]	5 C. W. N., 332	52, 904
[illegible]	7 C. W. N, 728	620
Jagatpal Singh *v.* Jageshar Bakhsh Singh (1902)	I. L. R, 25 All., 143 ; L R, 30 I. A., 27 : 7 C. W. N, 209	361, 599
Jagdish Bahadur *v.* Sheo Pertab Singh (1901)	5 C. W. N., 602 ; I. L. R., 23 All, 369 : L. R., 28 I. A., 100	782, 1180
Jagjivandas *v.* Bai Amba (1900)	I. L. R., 25 Bom., 362	777
Jagobundhoo Karmakar *v.* Emperor (1902)	I. L. R., 30 Calc., 415	212
Jagomohan Pal *v.* Ram Kumar Gope (1901)	I. L. R., 28 Calc., 416	847
Jahans *v.* Jahans (1902)	6 C. W. N, 414	329
Jahnnovi Chowdharani *v.* Secretary of State for India in Council (1902)	*7 C. W. N., 377*	1007, 1008, 1183
Jairamdas Ganeshdas *v.* Zamonlal Kissorilal (1903)	I. L. R., 27 Bom., 357	486
Jaliram Alom Ganburah v. Rajkumar Umar Singh (1900)	5 C. W. N., 72	283
Jamal-uddin *v.* Mujtaba Husain (1903)	I. L. R., 25 All, 631	986
Jambu Chetty v Palaniappa Chettiar (1902)	I. L. R., 26 Mad., 526	476, 477, 757
Jambu Ramaswamy Bhagavathar *v.* Sundararaja Chetti (1902)	I. L. R., 26 Mad., 239	758
Jamini Mohan Nundy *v.* Chandra Kumar Roy (1901)	6 C. W. N., 44	1029

Name of Case.	Volume and Page.	Column of Digest.
Kamala Prasad *v.* Sital Prasad (1901)	I. L. R., 28 Calc., 339; 5 C. W. N., 517	6
[illegible] (1902)	I. L. R., 26 Mad., 492	917
[illegible]	I. L. R., 24 All., 211	423
[illegible]	I. L. R., 23 All., 486	537
[illegible] bet Vani (1903)	I. L. R., 27 Bom., 297	739
[illegible] Emperor (1902)	I. L. R., 26 Mad., 469	920
[illegible]	I. L. R., 25 Mad., 385	949
[illegible]	I. L. R., 24 Mad., 438	693
[illegible] Vittil Muthoraikutt (1902)	I. L. R., 26 Mad., 195	241, 359
Karattole Edamana *v.* Unni Kannan (F. B., 1903)	I. L. R., 26 Mad., 649	694
Karban Ali *v.* Jafar Ali (1901)	5 C. W. N., 798	970
Karedla Vijayaraghava Perumalayya Naidu *v.* Vemavarapu Sitaramayya (1902)	I. L. R., 26 Mad., 361	66
Karim Nensey *v.* Heinrichs (1901)	L. R., 28 I. A., 198; I. L. R., 25 Bom., 563; 6 C. W. N., 1	235
[illegible] Kankachand (1902)	I. L. R., 26 Bom., 476	493
[illegible]	I. L. R., 24 Mad., 356	1058
[illegible]	I. L. R., 25 Mad., 429	460
[illegible]	I. L. R., 26 Mad., 480	1039, 1190
Karuppanan Sewai *v.* Srinivasan Chetti (1901)	I. L. R., 25 Mad., 215; L. R., 29 I. A., 38; 6 C. W. N., 241	55
Kasandas Raghunathdas *v.* Ankleshwar Municipality (1901)	I. L. R., 26 Bom., 294	1103
Kashi Prosad Singh *v.* Secretary of State for India in Council (1901)	I. L. R., 29 Calc., 140	867
Kashinath Kedari *v.* Ganesh Hari Narkar (1902)	I. L. R., 26 Bom., 739	807
Kasinatha Ayyar *v.* Uthumansa Rowthan (1901)	I. L. R., 25 Mad., 529	45, 167, 1188
Kashiram *v.* Pandu (F.B., 1902)	I. L. R., 27 Bom., 1	659
Kassim Mamoojee *v.* Isuf Mahomed Sulliman (1902)	I. L. R., 29 Calc., 509; 6 C. W. N., 829	392, 1189
[illegible] (1902)	I. L. R., 26 Bom., 522	1082
[illegible]	I. L. R., 26 Mad., 730	562
[illegible]	I. L. R., 26 Mad., 740	168
[illegible]	I. L. R., 26 Mad., 104	954
Kazi Zeamuddin Ahmed v. Queen-Empress (1901)	I. L. R., 28 Calc., 504; 5 C. W. N., 771	993
[illegible]	7 C. W. N., 294	599, 834
[illegible]	I. L. R., 29 Calc., 54	651
[illegible]	7 C. W. N., 711	978
[illegible] dhury (1901)	5 C. W. N., 763	117
——— *v.* King-Emperor (1901)	5 C. W. N., 897	394, 1186, 1188, 1189
Kedar Nath Ghosh *v.* Emperor (1903)	7 C. W. N., 795	286
Kedar Nath Mukerjee *v.* Prosonna Kumar Chatterjee (1901)	5 C. W. N., 559	987
Kedar Nath Sen *v.* Uma Charan (1900)	6 C. W. N., 57	1021, 1096, 1178, 1188
Kedar Nath Shaha *v.* Emperor (1903)	I. L. R., 30 Calc., 921; 7 C. W. N., 704	264, 1207

N

Name of Case.	Volume and Page.	Column of Digest.
Narain Uddin v. Srimanta Ghose (1901)	I. L. R., 29 Calc., 219	[illegible]
Naranbhai Vaghjibhai v. Ranchod Premchand (1901)	I. L. R., 26 Bom., 141	[illegible]
Narandas Parbhudas v. Parshottam Valu (1902)	I. L. R., 26 Bom., 757	[illegible]
Narasayya v. Collector of Anantapur (1900)	I. L. R., 24 Mad., 95	[illegible]
Narasimha Shankar Deshpande v. Balwant Lakshman (1903)	I. L. R., 27 Bom., 585	[illegible]
——— v. Imam valad Mahamad (1903)	I. L. R., 27 Bom., 520	[illegible]
[illegible]	I. L. R., 24 Mad., 62	[illegible]
[illegible]	I. L. R., 26 Mad., [illegible]	[illegible]
[illegible]	I. L. R., 27 Bom., [illegible]	[illegible]
[illegible]	I. L. R., 30 Calc., 485	[illegible]
[illegible]	I. L. R., 27 Bom., 273	[illegible]
[illegible] Belhe (1902)	I. L. R., 26 Bom., 716	[illegible]
Narayana Ayyangar v. Orr (1902)	I. L. R., 26 Mad., 252	[illegible]
Narayana Ayyar v. Venkataramana Ayyar (F.B., 1902)	I. L. R., 25 Mad., 220	[illegible]
Narayana Chettiar v. Chokkappa Mudaliar (1901)	I. L. R., 25 Mad., [illegible]	[illegible]
Narayana Raja v. Ramachandra Raja (1902)	I. L. R., 26 Mad., [illegible]	[illegible]
Narayana Reddi v. Venkata Chariar (1900)	I. L. R., 24 Mad., [illegible]	[illegible]
Narayana Row v. Dharmachar (1902)	I. L. R., 25 Mad., [illegible]	[illegible]
Narayanasami Reddi v. Osuru Reddi (1901)	I. L. R., 25 Mad., [illegible]	[illegible]
Narendra Nath Pahari v. Ram Gobind Pahari (1901)	I. L. R., [illegible] Calc., [illegible]; [illegible] W. N., [illegible]; I. L. R., [illegible] 17	[illegible]
Narendra Nath Sarkar v. Rai Charan Haldar (1902)	I. L. R., [illegible] Calc., [illegible]; [illegible] W. N., [illegible]	[illegible]
Narmadabai v. Bhavanishankar (1902)	I. L. R., [illegible] Bom., [illegible]	[illegible]
Narpat Singh v. Har Gayan (1903)	I. L. R., [illegible] All., [illegible]	[illegible]
Nasib Ali Mojumdar v. Rukhmini Mohan Enda (1901)	5 C. W. N., [illegible]	[illegible]
[illegible]	I. L. R., [illegible] Calc., [illegible]	[illegible]
[illegible]	I. L. R., [illegible] All., [illegible]	[illegible]
[illegible]	I. L. R., [illegible] Mad., [illegible]	[illegible]
[illegible]	I. L. R., [illegible] Calc., [illegible]	[illegible]
[illegible]	I. L. R., 27 Bom., [illegible]	[illegible]
[illegible]	I. L. R., 24 All., [illegible]	[illegible]
[illegible] (1903)	I. L. R., 27 Bom., [illegible]	[illegible]
[illegible]	I. L. R., [illegible] Bom., [illegible]	[illegible]
[illegible]	I. L. R., [illegible] Bom., [illegible]	[illegible]
[illegible]	6 C. W. N., [illegible]	[illegible]
[illegible]	I. L. R., [illegible] Calc., [illegible]	[illegible]
[illegible] (1901)	6 C. W. N., [illegible]	[illegible]
Neel Comul Mookerjee v. Bipro Dass Mookerjee (1900)	I. L. R., [illegible] Calc., [illegible]	[illegible]
Netai Chand Chuckerbutty v. Ashutosh Chukerbutty (1901)	5 C. W. N., [illegible]	[illegible]
Neti Rama Jogiah v. Venkata Charulu (1902)	I. L. R., [illegible] Mad., [illegible]	1014
Niadar v. Baru Mal (1901)	I. L. R., 24 All., [illegible]	205, 1213
Nidha Sah v. Murli Dhar (1902)	I. L. R., [illegible] I. A., [illegible]; I. L. R., 25 All., [illegible]; 7 C. W. N., 289	[illegible], 969
Nidhamarthi Mukkanti v. Thammana Ramayya (1902)	I. L. R., [illegible] Mad., 76	727 [illegible]

Name of Case.	Volume and Page.	Column of Digest.
[illegible] Behari Bose v. Queen-Empress (1900)	5 C. W. N., 294	519
[illegible]	5 C. W. N., 627	166
[illegible]	I. L. R., 26 Bom., 163	451
[illegible]	I. L. R., 30 Calc., 869	413, 1165
[illegible]	5 C. W. N., 63	1021
[illegible]	6 C. W. N., 66	955
[illegible]	I. L. R., 24 Mad., 681	957, 971
[illegible]	7 C. W. N., 105	990
Nizamuddin v. Mamtazuddin (1900)	I. L. R., 28 Calc., 135; 5 C. W. N., 263	574
Nobin Chandra Chaudhuri v. Kherode Nath Sur (1902)	6 C. W. N., 648	425
Nobin Chandra Chowdhury v. Surendra Nath Ghosh (1902)	7 C. W. N., 454	569
Nobin Chandra Soot v. Nabab Ali Sarkar (1900)	5 C. W. N., 343	874
Nobin Kally Dabee v. Ambica Churn Banerjee (1901)	5 C. W. N., 813	647
Nogendra Nandini Dassi v. Benoy Krishna Deb (1902)	I. L. R., 30 Calc., 521; 7 C. W. N., 121	438, 466, 474
Nogendra Nath Mozumdar v. Russik Chandra Rai (1901)	6 C. W. N., 346	1146
Nokori Dhur v. Sarup Chunder Dey (1900)	5 C. W. N., 341	94
Noni Lal Sett v. Corporation of Calcutta (1903)	7 C. W. N., 853	134, 135, 1199
North-Western Commercial Banking Corporation v. *Muhammad Ismail Khan* (1901)	I. L. R., 24 All., 208	1059
Nritta Kumari Dassi v. Puddomoni Bewah (1903)	I. L. R., 30 Calc., 503: 7 C. W. N., 649	875
Nritya Gopal Hazra v. Golam Rasool (1900)	I. L. R., 28 Calc., 180	1001
Nritya Gopal Sen—In the matter of (1900)	5 C. W. N., 45	585
Nunda Lal Bose v. Nistarini Dassee (1902)	7 C. W. N., 353	397, 517, 609, 988
Nundo Kumar Nasker v. Banomali Gayan (1902)	I. L. R., 29 Calc., 871	335
Nunna Brahmayya Setti v. Chaidaraboyina Venkitaswamy (1902)	I. L. R., 26 Mad., 214	83, 497

O

Name of Case.	Volume and Page.	Column of Digest.
Official Assignee of Madras v. Dalgairns (1902)	I. L. R., 26 Mad., 440	498, 896
Oriental Government Security Life Assurance Com-[illegible]	I. L. R., 25 Mad., 183	362, 504
[illegible]	I. L. R., 24 Mad., 65	570
[illegible]	5 C. W. N., 372	995, 1189
[illegible]	I. L. R., 28 Calc., 84	256

P

Name of Case.	Volume and Page.	Column of Digest.
Pachai Ammal (1902)	I. L. R., 26 Mad., 189	1039
Padan Saha v. Emperor (1903)	7 C. W. N., 658	825, 1200
Padarath v. Ram Ghulam (1901)	I. L. R., 23 All., 481	536
Padma Dat Joshi—In the matter of the petition of (F.B., 1902)	I. L. R., 24 All., 348	544, 584
Palani Goundan v. Kuppanda Goundan (1900)	I. L. R., 24 Mad., 335	754
Palani Palagan—In the matter of (1902)	I. L. R., 26 Mad., 55	388
Palanisami Cowndan v. Thondama Cowndan (1902)	I. L. R., 26 Mad., 595	327, 1112
Pamu Sanyasi v. Zamindar of Jayapur (1901)	I. L. R., 25 Mad., 540	1060, 1067

Name of Case.	Volume and Page.	Column of Digest.
Pinapati Mrutyumjaya v. Pinapati Janakamma (F.B., 1903)	I. L. R., 26 Mad., 647	716
[illegible] (1903)	7 C. W. N., 347	978
[illegible]	I. L. R., 24 All, 229	67, 1177
[illegible]	I. L. R., 26 Mad., 448	833, 1200
[illegible]	7 C. W. N., 155	634
[illegible] Lal v. [illegible] (1902)	I. L. R., 25 All., 165	692
Pragdas Sagurmall v. Girdhardas Mathuradas (1901)	I L. R., 26 Bom., 76	222, 864
Pramatha Chandra Roy v. Khetia Mohan Ghose (1902)	I. L. R., 29 Calc., 651	1130
Preo Lall Paul Chowdhry v. Radhika Prosad Paul Chowdhry (1901)	6 C. W. N., 42	1028
Pria Nath Das v. Ram Taran Chatterji (1903)	L. R., 30 I. A., 159: I. L. R., 30 Calc., 811: 7 C. W. N., 601	972
Priya Nath Bose v. Roy Basanta Kumar Singh (1900)	5 C. W. N., 213	207
Profulla Chandra Sen v. Emperor (1903)	I. L. R., 30 Calc., 905: 7 C W. N., 494	1035
Prokash Chandra Sarkar v. Adlam (1903)	I. L. R., 30 Calc, 696	918
——— v. Ram Prasad Pattak (1900)	I. L. R., 28 Calc., 302: 5 C. W. N., 291	859
——— In the matter of (1903)	7 C W. N, 797	233
Promotha Nath Majumdar v. Robert Watson & Co., Ld. (1903)	7 C. W. N., 846	699
Promotho Nath Mitter v. Kali Prasanna Chowdhry (1901)	I. L R., 28 Calc, 744	809
Prosanna Kumar Guha v. Bani Kanta Bhattacharjee (1903)	I. L. R., 30 Calc, 758	31
[illegible]	7 C. W N., 575	344, 615
[illegible]	I. L. R., 29 Calc, 793	70
[illegible]	5 C. W. N., 386	221
[illegible]	6 C. W. N., 185	1073
[illegible]	6 C. W. N., 914	947
——— v. Hayes (1901)	I. L. R., 28 Calc, 720: 5 C. W. N., 806: L. R., 28 I. A, 152	583
Pundit Prayrag Raj v. Gowkaran Pershad Tewari (1902)	6 C. W. N., 787	397, 888, 1162
Puniathavelu Mudaliar v. Bhashyam Ayyangar (1901)	I. L. R., 25 Mad., 406	492, 500, 593, 1190, 1195
Punnabati Dai v. Pudmanand Singh (1903)	7 C. W. N., 538	548
Puran Mal v. Janki Pershad Singh (1901)	I. L. R, 28 Calc., 680: 6 C. W. N., 114	700, 1037
Purna Chandra Bandopadhya v. Sasi Bhusan Mullik (1903)	7 C. W. N., 522	893
Purna Chandra Dutt—In the matter of (1903)	7 C. W. N., 373	833
Purna Chandra Sarkar v. Nil Madhub Nandi (1901)	5 C. W. N., 485	41, 223, 975
Purshottam Devjishet Thakar v. Kala Govindji Thakar (1901)	I. L. R., 26 Bom, 301	382, 791
Purushottam Dayaram v. Chatargir Guru Arjungir (1900)	I. L. R., 25 Bom., 82	621, 700
Puthia Valappil Barga v. Veloth Assenar (1902)	I. L. R., 25 Mad., 733	810
Putti Narayanamurthi Ayyar v. Marimuthu Pillai (1902)	I. L. R., 26 Mad., 322	248, 1210

Name of Case.	Volume and Page.	Column of Digest.
Ram Taruck Hazra *v.* Dilwar Ali (1901)	I. L. R., 29 Calc., 94: 6 C. W. N., 246	899
Ramabhadrachar *v.* Srinivasa Ayyangar (1900)	I. L. R., 24 Mad., 85	1125, 1192
Ramachandra Padayachi *v.* Kondayya Chetti (1901)	I. L. R., 24 Mad., 555	462
Ramakrishna Reddi *v.* Emperor (1903)	I. L. R., 26 Mad., 598	78, 541, 1194, 1199
Ramalinga Muppan *v.* Pavadai Goundan (1901)	I. L. R., 25 Mad., 519	440
Ramamirtham *v.* Ranganathan (1900)	I. L. R., 24 Mad., 299	1089
Raman *v.* Secretary of State for India in Council (1901)	I. L.R., 24 Mad., 427	1145
Raman Naidu *v.* Bhassoori Sanyasi (1903)	I. L. R., 26 Mad., 638	679
Raman Singh *v.* Queen-Empress (1900)	I. L. R., 28 Calc., 411: 5 C. W. N., 134	835
Ramanadhan Chetti *v.* Murugappa Chetti (1900)	I. L. R., 24 Mad., 45	770, 1176
Ramanathan Chettiar *v.* Subramania Sastrial (1902)	I. L. R., 26 Mad., 179	1018, 1203, 1207
[illegible] Chetti (1901)	I. L. R., 25 Mad., 448	1108
[illegible]	I. L. R., 25 Mad., 454	673
[illegible]	I. L. R., 24 Mad., 449	743, 1193
[illegible]	I. L. R., 26 Mad., 176	1067, 1096
[illegible]	I. L. R., 26 Mad., 760	964, 1211
[illegible]	I. L. R., 26 Mad., 468	563, 635
Ramaya Naika—In the matter of (F.B., 1903)	I. L. R., 26 Mad., 419	269, 904, 1179
Ramayya *v.* Sivayya (1900)	I. L. R., 24 Mad., 549	696
Rambhat *v.* Shankar Baswant (1901)	I. L. R., 25 Bom., 528	529
Ramchandra Vinayak Kulkarni *v.* Narayan Balaji (1903)	I. L. R., 27 Bom., 614	631
Ramdas *v.* Vazirsaheb (1901)	I. L. R., 25 Bom., 589	963
Ramdhan *v.* Manibai (1900)	I. L. R., 25 Bom., 429	1165
Rameshar Bakhsh Singh *v.* Arjun Singh (1900)	I. L. R., 23 All., 194: L. R., 28 I. A., 1	403
Rameshar Singh *v.* Durga Das (1901)	I. L. R., 23 All., 437	1057
Rameshwar Prosad Narain Singh *v.* Chandreshwar Prosad Narain Singh (1903)	7 C. W. N., 880	311, 1194
Rameshwar Prosad Singh *v.* Lachmi Prosad Singh (1903)	7 C. W. N., 688	218, 460, 473
Rameswar Marwari *v.* Biswa Nath Banerjee (1900)	5 C. W. N., 374	858
Rameswar Persad Narain Singh *v.* Harbans Singh (1901)	6 C. W. N., 104	852
[illegible] (1901)	I. L. R., 29 Calc., 43	510 (twice)
[illegible]	5 C. W. N., 296	251
[illegible]	6 C. W. N., 919	571
[illegible]	6 C. W. N., 861	983
[illegible]	I. L. R., 25 All., 628	46
[illegible]	7 C. W. N., 145	431, 442
[illegible]	I. L. R., 27 Bom., 91	314, 1179
[illegible] (F.B., 1902)	I. L. R., 26 Bom., 526	417
Rammoy Hazra *v.* Prem Chand Naskar (1901)	5 C. W. N., 423	792
Rampal Singh *v.* Balbhaddar Singh (1902)	L. R., 29 I. A., 203: I. L. R., 25 All., 1: 6 C. W. N., 849	304
Ramrao Narayan Bellary *v.* Rustumkhan (1901)	I. L. R., 26 Bom., 198	685
Ramrup Sahay *v.* Khushal Misser (1902)	6 C. W. N., 630	163, 900
Ramsay *v.* Boyle (1903)	I. L. R., 30 Calc., 489	328, 1177
——— *v.* ———	7 C. W. N., 501	328

Name of Case	Volume and Page.	Column of Digest.
Ramzan Ali v. Janardhan Singh (1902)	I. L. R., 30 Calc, 110: 6 C W. N., 881	855, 1183
Ran Bahadur Rai v. Parmeshar Bharthi (1902)	I. L. R., 24 All, 493	873
Ranchordas Moorarji v. Municipal Commissioner for the City of Bombay (1901)	I. L. R., 25 Bom., 387	124
Rangasamy Naiken v Komarammal (1902)	I. L. R., 26 Mad., 484	730
Rangayya Goundan v. Nanjappa Rao (1901)	L. R., 28 I. A., 221: I. L. R., 24 Mad., 491. 6 C. W. N., 17	939
Rango v. Bhomshetti (1901)	I. L. R., 26 Bom., 121	37, 747
Ranijulla v. Isbab Dhali (F.B., 1902)	I. L R., 29 Calc, 610: 6 C. W. N., 702	116
Ranjit Singh v. Naubat (1902)	I. L. R., 24 All., 504	1102, 1197
Ranmalsangji Bhagwatsangji v. Bai Shri Kundan-kuwar (1902)	I. L. R., 26 Bom., 707	371
[illegible]	7 C W N, 720	506, 947
[illegible]	7 C W. N., 132	106, 560
[illegible]	6 C. W. N, 687	1059
[illegible] (1900)	5 C. W. N., 215	
Ratan Mahanti v. Khatoo Sahoo (1902)	I. L R., 29 Calc., 400	372
Ratnamasari v. Akilandammal (1902)	I. L. R, 26 Mad., 291	633
Rattigadu v. Konda Reddi (1900)	I. L. R., 24 Mad., 271	672, 1208
Rayan Kutti v. Emperor (1903)	I L R., 26 Mad., 640	292, 385, 1181, 1188
Reasut v Courtney (1900)	I. L. R, 28 Calc., 423. 5 C. W. N., 211	926
Reference under Court Fees Act, 1870, s. 5 (1901)	I. L. R., 25 Mad, 24	47, 261
———Stamp Act, s 57 (1900)	I. L. R., 24 Mad., 176	1079
———(1901)	I. L R., 25 Mad, 3	1079, 1207
———(1901)	I. L. R, 25 Mad., 751	1080, 1180
———(1901)	I. L. R, 25 Mad, 752	1081
——— s. 61 (1) (1902)	I. L. R, 26 Mad, 473	1078, 1193
——— s. 57 of Act II of 1899 (F.B., 1901)	I. L. R., 23 All, 213	1081, 1209
———(F.B., 1902)	I. L. R, 24 All., 372	1083
———(F.B., 1902)	I. L. R., 24 All., 374	1080
——— the Indian Stamp Act, 1899 — In the matter of a (1903)	I. L. R., 30 Calc., 565	120, 1202
Regula Bheemappa v Emperor (1902)	I. L. R, 26 Mad, 249	884
Reily v. King-Emperor (1901)	I. L. R., 28 Calc, 434: 5 C. W. N., *609*	143, 1197
Remjit Singh v Luchman Prosad (1902)	7 C. W. N., 140	772
Ricketts v. Rameswar Malia (1900)	I. L. R, 28 Calc, 109	98, 953
Rivett-Carnac v. New Mofussil Company (1901)	I. L. R, 26 Bom, 54	203
Rodger v. Ashutosh Mukerji (1902)	6 C. W N., 829	917
Romanath Paul v. Kanai Lal Dey (1901)	7 C W N., 104	382
Rooke v Bengal Coal Company, Ltd. (1901)	I L R., 28 Calc, 485: 5 C. *W. N., 840*	946, 119 *1200*
Rose Anne D'Silva—In the goods of (1903)	I L R., 25 All, 355	590
Rose Learmouth—In the matter of (1900)	I. L. R, 24 Mad., 120	590, 887
Roshun Lall v. Ram Lall Mullick (1903)	I. L R, 30 Calc., 262. 7 C. W. N., 341	1019, 1189
Ross Alston v. Pitambar Dass (F B., 1903)	I L. R., 25 All, 509	92, 1096
Royal Insurance Co. v. Akhoy Coomar Dutt (1901)	6 C W. N, 41	56, 57

Name of Case.	Volume and Page.	Column of Digest.
[illegible] (1903)	I. L. R., 26 Mad., 502	593, 1195
[illegible]	I. L. R., 25 Mad., 507	1109
[illegible]	I. L. R., 24 Mad., 31	74
[illegible]	I. L. R., 26 Mad., 394	1116
[illegible]	5 C. W. N., 42	100
[illegible]	I. L. R., 30 Calc., 655	46
[illegible]	I. L. R., 25 All., 42	156
[illegible] (1902)	I. L. R., 26 Mad., 373	245
Sham Chand Giri v. Bhaya Ram Panday (1894)	5 C. W. N., 365	915
Sham Das v. Batul Bibi (1902)	I. L. R., 24 All., 538	730
Sham Koer v. Dah Koer (1902)	I. L. R., 29 Calc., 664: 6 C. W. N., 657: L. R., 29 I. A., 132	598
Sham Lal v. Ghasita (1901)	I. L. R., 23 All., 459	712
Shama Churn Hui v. Kanangai Chaitan Prosad (1903)	7 C. W. N., 594	599
Shama Prosad Ghose v. Taki Mullik (1901)	5 C. W. N., 816	189, 561, 831
Shama Prosunno Bose Mozumdar v. Brakoda Sundari Dasi (1900)	I. L. R., 28 Calc., 146	545
Shambati Koeri v. Jago Bibi (1902)	I. L. R., 29 Calc., 749: 6 C. W. N., 682: L. R., 29 I. A., 127	784
Shamji Deokaran v. Poonja Jairam (1902)	I. L. R., 26 Bom., 652	76
Shamrao Pandurang v. Secretary of State for India (1900)	I. L. R., 25 Bom., 32	574, 1205
Snamsh-ul-Jahan Begam v. Ahmad Wali Khan (1903)	I. L. R., 25 All., 337	246, 360
Shamsher Mundul v. Ganendra Narain Mitter (1902)	I. L. R., 29 Calc., 498	413
Shamsing v. Santabai (1901)	I. L. R., 25 Bom., 551	416
Shamsuddin Sirkar v. Emperor (1902)	I. L. R., 30 Calc., 107: 6 C. W. N., 885	918
Shankar Sarup v. Lala Phul Chand (1901)	5 C. W. N., 649: I. L. R., 23 All., 313: L. R., 28 I. A., 203	1017
Shankarbhai v. Somabhai (1900)	I. L. R., 25 Bom., 417	42, 1061
Shanmuga Mudaly v. Palnati Kuppu Chetty (F.B., 1902)	I. L. R., 25 Mad., 613	674
[illegible]	I. L. R., 23 All., 355	1013
[illegible]	I. L. R., 27 Bom., 452	364, 933
[illegible]	7 C. W. N., 386	1003
[illegible]	I. L. R., 25 Bom., 574	529, 711
[illegible]	I. L. R., 28 Calc., 574	85
[illegible]	7 C. W. N., 343	68
[illegible]	I. L. R., 24 All., 501	1076
[illegible]	I. L. R., 23 All., 285	70
Sheo Partab Bahadur Singh v. Allahabad Bank (1903)	I. L. R., 25 All., 476: L. R., 30 I. A., 209: 7 C. W. N., 840	465
[illegible]	5 C. W. N., 232	738
[illegible]	I. L. R., 25 All., 79	275, 1131
[illegible]	I. L. R., 25 All., 167	373, 1022
[illegible]	I. L. R., 24 All., 189	549
Sheo Shankar Lal v. Debi Sahai (1903)	I. L. R., 25 All., 468: L. R., 30 I. A., 202: 7 C. W. N., 831	465

Name of Case.	Volume and Page.	Column of Digest.
Sourindra Mohun Tagore v. Siromoni Debi (1900)	I. L. R., 28 Calc., 171 : 5 C. W. N., 307	795, 948, 1185
Souza v. Golam Moidin Beari (1902)	I. L. R., 26 Mad., 438	38
Sreeramulu v. Kristamma (1902)	I. L. R., 26 Mad., 143	470, 643
Srihari Shome v. Lal Khan (1900)	5 C. W. N., 250	267, 919, 1141, 1183
Srimati Sarat Kumari Debi v. Nimai Charn Dey Sircar (1900)	5 C. W. N., 265	1020
Srimohan Thakur v. Macgregor (1901)	I. L. R., 28 Calc., 769	802
Sri Narain Chowdhry v. Jodoo Nath Chowdhry (1900)	5 C. W. N., 147	875
Sri Narain Thakur v. Luchmeshwar Singh (1901)	6 C. W. N., 592	113
Sri Nath Sahai v. Ram Ratan Lal (1902)	I. L. R., 24 All., 361	706
Sri Pal Rai v. Surajbali (1901)	I. L. R., 24 All., 82	466
Srinivasa Ayyar v. Muthusami Pillai (1900)	I. L. R., 24 Mad., 246	575, 641
Sriramulu v. Chinna Venkatasami (1901)	I. L. R., 25 Mad., 396	624
Stalkartt v. Stalkartt (1900)	I. L. R., 28 Calc., 250	916
[illegible]	6 C. W. N., 898	266
[illegible]	I. L. R., 28 Calc., 334	31
[illegible]	I. L. R., 26 Mad., 168	486, 487
[illegible]	I. L. R., 25 Mad., 424	469
[illegible]	I. L. R., 24 Mad. 118	1058, 1070
[illegible]	I. L. R., 24 Mad., 81	1105
[illegible]	I. L. R., 26 Bom., 392	865
[illegible]	I. L. R., 24 Mad., 683	863
[illegible]	I. L. R., 26 Mad., 263	1012
[illegible]	I. L. R., 25 Mad., 585	460
[illegible]	I. L. R., 24 Mad., 200	1169
[illegible]	I. L. R., 24 Mad., 214	478
[illegible]	I. L. R., 26 Mad., 363	63, 673, 676
[illegible]	I. L. R., 25 Mad., 383	44, 160
[illegible] Udayar (1900)	I. L. R., 24 Mad., 307	1004
Subrahmania Pattar v. Narayanan Nayar (1900)	I. L. R., 24 Mad., 130	881
[illegible]	I. L. R., 26 Mad., 627	416
[illegible]	I. L. R., 26 Mad., 330	427
[illegible]	I. L. R., 26 Mad., 368	1060
[illegible]	I. L. R., 26 Mad., 197	653, 1192
Subramania Iyer v. King-Emperor (1901)	5 C. W. N. 866 : I. L. R., 25 Mad., 61 : L. R., 28 I. A., 257	518
Subramanian Chettiar v. Arunachalam Chettiar (1902)	L. R., 29 I. A., 138 : I. L. R., 25 Mad., 603 : 6 C. W. N., 865	360
Subudhi Rantho v. Balarama Pudi (1902)	I. L. R., 26 Mad., 481	821, 1186
Suchandi Kolitani v. Dom Kolita (1900)	5 C. W. N., 214	207
Sudarsanam Maistri v. Narasimhulu Maistri (1901)	I. L. R., 25 Mad., 149	446, 628
Sujan Bibi v. Sagar Mandal (1900)	5 C. W. N., 145	481
Sukh Dei v. Kedar Nath (1901)	I. L. R., 23 All., 405 : L. R., 28 I. A., 186 : 5 C. W. N., 895	780
Sukhdeo Prasad v. Jamna (1900)	I. L. R., 23 All., 60	661
——— v. Lachman Singh (1902)	I. L. R., 24 All., 456	829, 940
Sukru Dosadh v. Ram Pergash Singh (1902)	I. L. R., 30 Calc., 443 : 7 C. W. N., 174	848, 1178
Sukumari Bewa v. Ananta Malia (1900)	I. L. R., 28 Calc., 168	418
Sundar Lal v. Fakir Chand (1902)	I. L. R., 25 All., 62	93

Name of Case.	Volume and Page.	Column of Digest.
Sondar Majhi v. Emperor (1903)	I. L. R., 30 Calc., 1084	579
	I. L. R., 26 Mad., 200	1060, 1210
	I. L. R., 25 Mad., 635	903
	I. L. R., 26 Mad., 505	455
Sunder Dasadh v. Sital Mahto (1900)	I. L. R., 28 Calc., 217 : 5 C. W. N., 291	817
Sunder Koer v. Chandishwar Prosad Singh (1903)	I. L. R., 30 Calc., 679	53, 1200
Suraj Prosad v. Standard Life Insurance Company (1903)	I. L. R., 30 Calc., 625	862
Surajmani v. Rabi Nath (1903)	I. L. R., 25 All., 351	471
Suraneni Venkata Papayya Rau v. Secretary of State for India in Council (1902)	I. L. R., 26 Mad., 51	332
Surat Lall Chowdhry v. Emperor (1902)	I. L. R., 29 Calc., 211 : 6 C. W. N., 251	1115
Surendra Keshub Roy v. Khetter Krishto Mitter (1903)	I. L. R., 30 Calc., 609 : 7 C. W. N., 517	865
Surendra Nath Sarma v. Rai Mohan Das (1903)	I. L. R., 30 Calc., 690 : 7 C. W. N., 634	50
Surij Mull v. Hudson (1900)	I. L. R., 24 Mad., 259	532, 1078, 1209
Surja Kumar Dutt v. Arun Chunder Roy (1901)	I. L. R., 28 Calc., 465 : 5 C. W. N., 767	606
Surja Pershad Narain Singh v. Reid (1902)	I. L. R., 29 Calc., 622 : 6 C. W. N., 409	706
Surjya Hariani v. King-Emperor (1901)	6 C. W. N., 295	214
Surjya Kanta Acharjee v. Hem Chunder Chowdhry (1902)	I. L. R., 30 Calc., 508 : 7 C. W. N., 404	1172
Surjya Narain Singh—In the matter of (1900)	5 C. W. N., 110	9
Surjyamoni Dasi v. Kali Kanta Das (1900)	I. L. R., 28 Calc., 37 : 5 C. W. N., 195	600, 972, 1169
	I. L. R., 26 Mad., 681	416
	I. L. R., 25 Mad., 504	307
	5 C. W. N., 27	793
	6 C. W. N., 903	216
	6 C. W. N., 298	695
	I. L. R., 24 All., 231	686

T

Name of Case.	Volume and Page.	Column of Digest.
Talshibhai Naranbhai v. Ranchhod Gobar (1902)	I. L. R., 26 Bom., 412	645
Tamasha Bibi v. Mathura Nath Bhowmik (1901)	I. L. R., 28 Calc., 590 : 6 C. W. N., 67	996
Tameshar Prasad v. Thakur Prasad (1903)	I. L. R., 25 All., 443	40, 161, 1020
Tara Pado Ghose v. Kamini Dassi (1901)	I. L. R., 29 Calc., 644	167, 751, 1068
	I. L. R., 30 Calc., 910	23, 1182
	W. N., 248	2591
	W. N., 461	853
	W. N., 524	719
	W. N., 25	920
	R., 27 Bom., 43	644
Tarvadi Bholanath Harishanker v. Bai Kashi (1901)	I. L. R., 26 Bom., 305	82, 1198
Tasadduq Husain v. Hayat-un-nissa (1903)	I. L. R., 25 All., 280	36, 1177

Name of Case.	Volume and Page.	Column of Digest.
Tassaduq Rasul Khan *v.* Kashi Ram (1902)	I. L. R., 25 All., 109 : L. R., 30 I. A., 35 : 7 C. W. N., 177	54
[illegible]	I. L. R., 25 Bom., 269	561, 1213
[illegible]	I. L. R., 24 All., 342	45, 1184
[illegible]	I. L R., 25 All., 59	710
[illegible]	5 C. W. N., 329	769
[illegible] (1901)	I. L. R., 28 Calc., 751 : 5 C. W. N., 673	436
"Telena," the (1901)	I. L. R., 29 Calc., 402 : 6 C. W. N., 773	22, 1180, 1193
Templeton *v.* Laurie (1900)	I. L R., 25 Bom., 230	257, 531, 1182
Thakur Prasad *v.* Abdul Hasan (1900)	I. L. R., 23 All., 13	655
Thakur Singh *v.* Nokhe Singh (1901)	I. L. R., 23 All., 309	401
Thandraya Mudaly *v.* Emperor (1902)	I. L. R., 26 Mad., 38	228
Thithi Pakurudasu *v.* Bheemudu (1902)	I. L. R., 26 Mad., 430	240, 663
Tikam Singh *v.* Dhan Kunwar (1902)	I. L. R., 24 All., 445	348
Tincowry Dey *v.* Fakir Chand Dey (1902)	I. L. R., 30 Calc., 218	222
Tirlok Nath Shukul *v.* Lachmin Kunwari (1903)	I. L. R., 25 All., 403 : L. R., 30 I. A., 152 : 7 C. W. N., 617	776
Toolsi Dass Kurmokar *v.* Madan Gopal Dey (1901)	I. L. R., 28 Calc., 499	473
Toonya Ram *v.* East Indian Railway Company (1902)	I. L. R., 30 Calc., 257 : 7 C. W. N., 370	912
Tribhovan Chunilal *v.* Ahmedabad Municipality (1902)	I. L. R., 27 Bom., 221	124
Trimbak Tukaram Naik *v.* Bhagchand (1902)	I. L. R., 27 Bom., 21	512
Troylokhyanath Bose *v.* Macleod (1900)	I. L. R., 28 Calc., 28	109
Troylokya Nath Bose *v.* Jyoti Prokash Nandi (1903)	I. L. R., 30 Calc., 761	651, 653, 658
Tukaram *v.* Anantbhat (1900)	I. L. R., 25 Bom., 252	173
Tukaram bin Mairal *v.* Ramchand Malukchand (F.B., 1901)	I. L. R., 26 Bom., 252	727
Tukaram Gopal *v.* Pandurang Sadaram (1901)	I. L. R., 25 Bom., 584	609
Tukun Singh *v.* Honuman Das (1902)	7 C. W. N., 108	298
Tullaram *v.* Corporation of Calcutta (1902)	I. L. R., 30 Calc., 817 : 7 C. W. N., 329	132
Tulsa [illegible]	I. L. R., 25 All., 71	1068
T[illegible]	6 C. W. N., 178	789, 966
T[illegible]	I. L. R., 26 Bom., 750	628, 1149
T[illegible]	6 C. W. N., 809	478, 759
Turner *v.* Bank of Bombay (1900)	I. L. R., 25 Bom., 52	876

U

Name of Case.	Volume and Page.	Column of Digest.
Udit Narain Misr *v.* Muhammad Minnat-ulla (1903)	I. L. R., 25 All., 618	242, 627, 1074
Udit Uradhia *v.* Imam Pandi Bibi (F.B., 1902)	I. L. R., 24 All., 402	934
Udoy Kumari Ghatwalin *v.* Hari Ram Shaha (1901)	I. L. R., 28 Calc., 483	83
Udwant Singh *v.* Tokhan Singh (1901)	I. L. R., 28 Calc., 353 : L. R., 28 I. A., 57	863
Ugra Mohon Thakur *v.* Bedeshi Roy (1900)	5 C. W. N., 360	551
Uma Charan Das *v.* Muktakeshi Dasi (1900)	I. L. R., 28 Calc., 149 : 5 C. W. N., 443	32, 1190

V

Name of Case.	Volume and Page.	Column of Digest.
Sundar Majhi v. Emperor (1903)	I. L. R., 30 Calc., 1084	579
Sundaralingam Chetti v. Mariyappa Chetti (1902)	I. L. R., 26 Mad., 200	1060, 1210
Sundaram Ayyar v. Municipal Council of Madura (1901)	I. L. R., 25 Mad., 635	903
Sundari Ammal v. Subramania Ayyar (1902)	I. L. R., 26 Mad., 505	455
Sunder Dasadh v. Sital Mahto (1900)	I. L. R., 28 Calc., 217 : 5 C. W. N., 291	917
Sunder Koer v. Chandishwar Prosad Singh (1903)	I. L. R., 30 Calc., 679	53, 1200
Suraj Prasad v. Standard Life Insurance Company (1903)	I. L. R., 30 Calc., 625	862
Surajmani v. Rabi Nath (1903)	I. L. R., 25 All., 351	471
Suraneni Venkata Papayya Rau v. Secretary of State for India in Council (1902)	I. L. R., 25 Mad., 51	332
Surat Lall Chowdhry v. Emperor (1902)	I. L. R., 29 Calc., 211 : 6 C. W. N., 251	1115
Surendra Keshub Roy v. Khetter Krishto Mitter (1903)	I. L. R., 30 Calc., 609 : 7 C. W. N., 517	865
Surendra Nath Sarma v. Rai Mohan Das (1903)	I. L. R., 30 Calc., 690 : 7 C. W. N., 634	60
Surij Mull v. Hudson (1900)	I. L. R., 24 Mad., 259	632, 1078, 1209
Surja Kumar Dutt v. Arun Chunder Roy (1901)	I. L. R., 28 Calc., 465 : 5 C. W. N., 767	606
Surja Pershad Narain Singh v. Reid (1902)	I. L. R., 29 Calc., 622 : 6 C. W. N., 409	706
Surjya Hariani v. King-Emperor (1901)	6 C. W. N., 295	214
Surjya Kanta Acharjee v. Hem Chunder Chowdhry (1902)	I. L. R., 30 Calc., 508 : 7 C. W. N., 494	1172
Surjya Narain Singh—In the matter of (1900)	5 C. W. N., 110	9
Surjyamoni Dasi v. Kali Kanta Das (1900)	I. L. R., 28 Calc., 37 : 5 C. W. N., 195	600, 972, 1169
Suryanarayana v. Venkataramana (1903)	I. L. R., 26 Mad., 681	416
Suryanarayanamurti v. Tammanna (1901)	I. L. R., 25 Mad., 504	307
Suttya Suttya Ghosal v. Golap Moni Debi (1897)	5 C. W. N., 27	793
Swarnamoyee Debi v. Hari Das Roy (1902)	6 C. W. N., 903	245
Syama Charan Karmoker v. Jhatoo Haldar (1901)	6 C. W. N., 298	695
Syeda Bibi v. Mughal Jan (1902)	I. L. R., 24 All., 231	686

T

Name of Case.	Volume and Page.	Column of Digest.
Talshibhai Naranbhai v. Ranchhod Gobar (1902)	I. L. R., 26 Bom., 442	645
Tamasha Bibi v. Mathura Nath Bhowmik (1901)	I. L. R., 28 Calc., 590 : 6 C. W. N., 67	996
Tameshar Prasad v. Thakur Prasad (1903)	I. L. R., 25 All., 443	40, 161, 1020
Tara Pado Ghose v. Kamini Dassi (1901)	I. L. R., 29 Calc., 644	167, 751, 1008
[illegible]	I. L. R., 30 Calc., 910	23, 1182
[illegible]	5 C. W. N., 248	2591
[illegible]	7 C. W. N., 461	853
[illegible]	7 C. W. N., 524	719
[illegible]	7 C. W. N., 25	920
[illegible]	I. L. R., 27 Bom., 43	644
Tarvadi Bholanath Harishanker v. Bai Kashi (1901)	I. L. R., 26 Bom., 305	82, 1198
Tasadduq Husain v. Hayat-un-nissa (1903)	I. L. R., 25 All., 280	36, 1177

Name of Case.	Volume and Page.	Column of Digest.
Venkatachala Reddi *v.* Venkatarama Reddi (1901)	I. L. R., 24 Mad., 665	171
Venkatapathi Naidu *v.* Tirumalai Chetti (1901)	I. L. R., 24 Mad., 447	1069
Venkatarama Ayyar *v.* Venkata Subrahmanian (1900)	I. L. R., 24 Mad., 27	627, 939
Venkataramanamma *v.* Purushottam (1900)	I. L. R., 25 Mad., 188	655
Venkatarao Krishnappa *v.* Mahableshwar (1901)	I. L. R., 26 Bom., 241	731
Venkataratnam Naidu *v.* Ramaraju (1901)	I. L. R., 24 Mad., 361	611, 612
Venkataram *v.* Chinna Ramayya (1901)	I. L. R., 24 Mad., 695	657
Venkatesa Ayyangar (1902)	I. L. R., 26 Mad., 193	1040
Venkateswarulu *v.* Brahmaravutu Raja Kristnaji (1901)	I. L. R., 25 Mad., 634	34, 1200
Venkayyamma Garu *v.* Venkataramanayyamma (1902)	L. R. 29 I. A., 156: I. L. R., 25 Mad., 678: 7 C. W. N., 1	442, 475, 886
Verabhai Ajubhai *v.* Bai Hiraba (1903)	I. L. R., 27 Bom., 492: L. R., 30 I. A., 234: 7 C. W. N., 716	418
Vijiaraghava Chariar v. Emperor (F.B., *1903*)	I. L. R., 26 Mad., 554	937, 1186, 1195
Vikramadeo Maharajulum Garu *v.* Neladevi Pattamadhadevi Garu (1902)	I. L. R., 26 Mad., 266	413, 1185
Vinayak *v.* Gopal (1903)	I. L. R., 27 Bom., 353: L. R., 30 I. A., 77: 7 C. W. *N., 409*	801
Vinayak Atmaram *v.* Collector of Bombay (1901)	I. L. R., 26 Bom., 339	556, 1207
Vinayak Gangadhar Bhat *v.* Krishnarao Sakharam [illegible]	I. L. R., 25 Bom., 625	1059, 1070
[illegible]	I. L. R., 25 Bom., 367	445
[illegible]	I. L. R., 26 Bom., 661	962
[illegible]	I. L. R., 25 Bom., 129	425
Viraraghava Ayyangar *v.* Kanagavalli Ammal (1901)	I. L. R., 25 Mad., 503	675, 1213
Virupakshappa *v.* Shidappa (1901)	I. L. R., 26 Bom., 109	224
Vishnu Vasudev Juvekar *v.* Ramling Bhikling Gurav (1901)	I. L. R., 26 Bom., 25	965
Vishwanath Ramkrishna *v.* Vasudev Lakshman (1901)	I. L. R., 25 Bom., 699	187, 604
Visvanathan Chetti *v.* Ramanathan Chetti (1901)	I. L. R., 24 Mad., 646	312
Vithal *v.* Hari (1900)	I. L. R., 25 Bom., 78	626
Vithaldas Ganpat *v.* Dattaram Ramchandra (1901)	I. L. R., 26 Bom., 298	711
Vithaldas Kanjishet *v.* Secretary of State for India (1901)	I. L. R., 26 Bom., 410	561
Vulley Mahomed *v.* Dattubhoy Hassam (1900)	I. L. R., 25 Bom., 10	72
Vyasachary *v.* Keshavacharya (1901)	I. L. R., 25 Mad., 654	593, 1195

W

Name of Case.	Volume and Page.	Column of Digest.
Wali-Ullah *v.* Kanhaya Lal (F.B., 1902)	I. L. R., 25 All., 174	43, 60
Wahid-un-nissa *v.* Gobardhan Das (F.B., 1903)	I. L. R., 25 All., 388	736
Wajih-ud-din *v.* Wallullah (1902)	I. L. R., 24 All., 381	1131
Wallan *v.* Banke Behari Pershad Singh (1903)	I. L. R., 30 Calc., 1021: 7 C. W. N., 774: L. R., 30 I. A., 182	713
Waliul Hassan *v.* Gopal Sarun Narain Singh (1902)	6 C. W. N., 905	425, 1135
Walters *v.* Ibrahim (1903)	7 C. W. N., 527	324
Waris Khan *v.* Daulat Khan (1902)	I. L. R., 25 All., 77	575
Watson *v.* Lloyd (1901)	*I. L. R., 25 Mad., 402*	84

TABLE

OF

HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES IN THE DIGEST.

The headings and sub-headings under which the cases are arranged are printed in this table in capitals, the headings in black type and the sub-headings in small capitals. The cross-references are printed in ordinary type.

A DIGEST

OF

THE HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA.

1901-1903.

A

ABANDONMENT.

——of children—

—*Penal Code (Act XLV of 1860), s. 317—Exposure of child with intention to abandon—Ingredients of offence.*—Upon a charge being preferred against a mother, of exposure and abandonment of her child, under s. 317, Indian Penal Code, the Sessions Judge believed that the accused had left the child at a particular spot with the [illegible] for by [illegible] uitted [illegible] been [illegible] liber- [illegible] was) found and looked after. *Held* that the acquittal was wrong The gist of the offence under s 317 [illegible]

——of issue—

See PLEADER—AUTHORITY OF, TO BIND CLIENT . . **L. R., 29 I. A., 76**

—— of part of claim—

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

——of tenancy—

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT OR SURRENDER OF TENANCY

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

ABATEMENT OF APPEAL.

See ABATEMENT OF SUIT—APPEALS

ABATEMENT OF RENT.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . . **6 C. W. N., 60**

See N.-W. PROVINCES RENT ACT (XII OF 1881), CH. II AND S. 93.

[I. L. R., 23 All., 270

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD . . **I. L. R., 29 Calc., 370**

—*Landlord and tenant—Land Acquisition Act (I of 1894)—Patnidar, whether entitled to abatement of rent and compensation—Proportion—Principle.*—Where a portion of a patni is acquired by Government under the Land Acquisition Act, the patnidar is entitled to abatement of rent at the hands of the zamindar, as the land taken up by Government is absolutely lost to the patnidar; and he is also entitled to some share of the compensation money Principle as to the rule of proportion as to abatement of rent and amount of compensation discussed. *Burdwan Raj case, S. D. A. for 1860,* [illegible]

ABATEMENT OF SUIT.

	Col.
1 SUITS	2
2. APPEALS	3

1. SUITS.

—*Civil Procedure Code, ss 368, 588 (18)—Death of one of several defendants—Order declaring* [illegible]

ABATEMENT OF SUIT—*continued.*

1. SUITS—*concluded.*

under s. 588 (19) of the Code. Where a defendant to a suit for the recovery of a mortgage-debt who was on the record as a surety personally for the payment of the mortgage-money, died, and the plaintiff declined to place on the record such defendant's legal representative, it was *held* that this only amounted to a waiver of the plaintiff's rights as against the surety, and did not preclude him from continuing the suit against the mortgagor. The suit did not abate. MEHDI HUSAIN *v.* SUGHRA BEGAM (1902) . . I. L. R., 25 All., 208

2. APPEALS.

1.—Death of appellant—*Civil Procedure Code (XIV of 1882), ss. 361 and 582—Death of appellant after appeal filed, but before hearing of appeal—Defamation—Maxim "actio personalis moritur cum persona"—Practice*—In a suit for defamation, the plaintiff obtained a decree for damages against the defendant, and executed the decree. The defendant filed an appeal, but died before the hearing. His son and legal representative was placed on the record as appellant. When the [illegible]

2. ———— *Civil Procedure Code, ss. 361, 362, 363, 544 and 582—Parties—Death of one of several appellants—Survival of right of appeal—Abatement of appeal.*—Where several plaintiffs or defendants jointly appeal against a decree to which [illegible] the appeal as a whole to abate. *Chandarsang v.* [illegible] SEWAK *v.* LAMBAR PANDE (1902) [I. L. R., 25 All., 27

3.—Death of respondent—*Civil Procedure Code, ss. 368, 582—Death of respondents pending appeal—Abatement of appeal.*—Six persons held a decree, in execution of which an application was made to attach certain property as the property of the judgment-debtors. Objections were made under s. 278 of the Code of Civil Procedure, and were allowed. Thereupon four out of the six decree-holders filed a suit for a declaration as to the ownership of the [illegible]

ABATEMENT OF SUIT—*concluded.*

2. APPEALS—*concluded.*

The plaintiffs appealed to the High Court, but pending the hearing the two decree-holders who had been made defendants-respondents died, and no representatives of these respondents were placed upon the record. *Held* that the appeal did not abate. *Chandarsang v. Khimabhai (1897), I. L. R., 22 Bom., 718,* referred to. *Kamlapat v. Baldeo (1900), I. L. R., 22 All., 222,* distinguished. ALLA BAKHSH *v.* MADHO RAM (1900) . I. L. R., 23 All., 22

4. ———— *Practice—Procedure—Abatement—Civil Procedure Code (Act XIV of 1882), ss. 368, 582—Death of some of the respondents—Legal representatives not brought on the record—Abatement of appeal as against them—Appeal continuing against the remaining respondents.*—The plaintiff filed an appeal in a District Court. It was admitted, and then adjourned *sine die.* At the hearing, which took place nearly two years afterwards, it appeared that two of the respondents had died in the meanwhile, and their legal representa- [illegible]

ADESANG PAHADSANG (1901) [I. L. R., 26 Bom., 203

ABDUCTION.

See KIDNAPPING.

ABETMENT.

See BIGAMY . . 6 C. W. N., 343

See CONSPIRACY. [I. L. R., 28 Calc., 797

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION. [I. L. R., 30 Calc., 905

See UNLAWFUL ASSEMBLY. [5 C. W. N., 250

1.—*Penal Code (Act XLV of 1860), s. 211—False information to police—False charge, prosecution for—Facts amounting to offence—Abetment, knowing that charge is false—Advice with knowledge—Prejudice*—In the course of a quarrel between Ramlogan and Bandhan, Topsi, who was sitting near, took Ramlogan's part and struck Bandhan, whereupon Bandhan fled. Ramlogan then [illegible] quently both Ramlogan and Topsi were convicted [illegible] logan was present at the time when the theft was alleged to have been committed, the story, if false,

ABETMENT—*concluded.*

was false to Ramlogan's knowledge. That, having made Topsi lodge an information which he knew to be false, Ramlogan was guilty of abetting an offence under s. 211, Indian Penal Code. *Held* also that, although the conviction was for the substantive offence, as the sentence was sustainable under ss. 211/109, and there was also no ground for supposing that the accused had been prejudiced by the conviction under s 211, it was not necessary to alter the conviction. The making a false charge before the police falls within the first portion of s. 211, Indian Penal Code. *Queen-Empress* v. *Karim Buksh (1887), I. L. R., 14 Calc., 633,* followed. RAM LOGAN LAL v. EMPEROR (1903) . . . . 7 C. W. N., 556

2.—*Conspiracy—Penal Code (Act XLV of 1860), s. 109*—*Per* BHASHYAM AYYANGAR, J.—Under the Indian Penal Code, conspiracy, except in cases provided for by ss. 311, 400, 401, 402 and 121A of the Code, is a mere species of abetment where an act or an illegal omission takes place in pursuance of that conspiracy, and amounts to a distinct offence for each distinct offence abetted by conspiracy. KING-EMPEROR v. TIRUMAL REDDI (1901) . . . I. L. R., 24 Mad., 523

3.—*Penal Code (Act XLV of 1860), s. 498—"Enticing away" a woman—Charge of abetment against the woman enticed—Validity*—Where a [illegible]

[illegible]

ABKARI LAWS

See EXCISE LAWS.

ABSCONDING OFFENDER.

—*Defence—Right of private defence—Public servant—Unlawful assembly—Public servant acting in good faith under colour of his office—Institution of proceedings—Criminal Procedure Code (Act V of 1898), ss 87, 88 and 190—Penal Code (Act XLV of 1860), ss 99, 143 and 182*—A Magistrate issued a proclamation under s 87 of the [illegible]

[illegible]

were the accused, assembled, and, by assuming a threatening attitude, prevented the police officer from [illegible]

[illegible]

order of attachment might not have been properly

ABSCONDING OFFENDER—*concluded.*

[illegible]

ABWABS.

See CESS.

[6 C. W. N., 360
I. L. R., 28 Calc., 17

ACCIDENT, LOSS BY.

See RAILWAY COMPANY.

[I. L. R., 23 All., 367
I. L. R., 27 Bom., 126, 597

ACCOMPLICE.

See APPROVER . 7 C. W. N., 457

See CHARGE TO JURY—MISDIRECTION.
[I. L. R., 26 Mad., 1

[illegible]

not require the same amount of corroboration as that of the person who is an actual participator with the principal offender In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice, the Courts [illegible]

[illegible]

2.—————— *Evidence—Bribery—Evidence Act (I of 1872), ss 114, Ill (b), and 133*— [illegible]

[illegible]

maxim does or does not apply to a particular case,

ACCOMPLICE—*concluded.*

it must be remembered that all persons coming [illegible]

[I. L. R., 26 Bom., 193

[illegible]

Queen v. *Elahi Bax, B. L. R., Sup. Vol* (F.B.), *459*, referred to KING-EMPEROR *v.* MOHIUDDIN SAHIB (1901) . . I. L. R., 25 Mad., 143

ACCOUNT.

See EXECUTOR . 7 C. W. N., 476

See PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS [I. L. R., 28 Calc., 53

See PRACTICE—CIVIL CASES—PARTIES. [I. L. R., 30 Calc., 609

——liability to—

See MORTGAGE—POSSESSION UNDER MORTGAGE . I. L. R., 25 All., 287

——right to an—

See EXECUTOR . I. L. R., 27 Bom., 281

See TRANSFER OF PROPERTY ACT, s. 93. [I. L. R., 30 Calc., 463

ACCOUNT STATED.

See LIMITATION ACT, 1877—
s. 19—ACKNOWLEDGMENT OF DEBTS; SCH. II, ART 64

ACCOUNT, SUIT FOR.

See LIMITATION ACT, 1877, SCH. II, ART. 89 . . . I. L. R., 24 All., 27

See PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION . . I. L. R., 28 Calc., 769

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS . I. L. R., 30 Calc., 627

ACCOUNT BOOKS, ENTRIES IN.

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES. [I. L. R., 29 Calc., 334

ACCOUNT SALES.

See EVIDENCE—CIVIL CASES—ACCOUNT SALES.

ACCOUNTS.

See COMMISSIONER FOR TAKING ACCOUNTS. [5 C. W. N., 692

See INTEREST—MISCELLANEOUS CASES—ACCOUNTS.

See MORTGAGE—ACCOUNTS.

See RECEIVER . 5 C. W. N., 223

——adjustment of, in execution—

See CIVIL PROCEDURE CODE, s. 501. [6 C. W. N., 710

——by guardian—

See GUARDIANS AND WARDS ACT (VIII OF 1890), ss. 34, 41 . 5 C. W. N., 207

ACCRETION.

See MALIKANA . . 7 C. W. N., 846

——assessment of, to revenue—

See EVIDENCE—CIVIL CASES—MAPS [I. L. R., 30 Calc., 291

——suit for alluvial land—

See LIMITATION ACT, 1877. [I. L. R., 29 Calc., 518

ACCUSED PERSON.

See COMPENSATION—CRIMINAL CASES—TO ACCUSED, ON DISMISSAL OF COMPLAINT.

See DETENTION OF ACCUSED BY POLICE.

See DISCHARGE OF ACCUSED.

See EVIDENCE—CRIMINAL CASES—EXAMINATION OF ACCUSED.

See EXAMINATION OF ACCUSED PERSON.

See REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED.

——effect of compounding on co-accused—

See COMPOUNDING OFFENCE. [7 C. W. N., 176

——error in charge—

See ERROR . I. L. R., 29 Calc., 481

——necessity for notice to, before passing order to prejudice of—

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES. [I. L. R., 26 Mad., 41

ACCUSED PERSON—*concluded.*

——notice to—

See Sanction for Prosecution—Notice of Sanction . I. L. R., 26 Mad., 592

——wrong description of—

See Warrant of Arrest—Criminal Cases . . I. L. R., 28 Calc., 399

—*Code of Criminal Procedure (Act V of 1898), ss. 208, 213, 215 and 526—Commitment in the absence of accused, whether legal—Witness, examination of, in the absence of accused, if proper—Cross-examination of prosecution witnesses—Postponement, application for, refusal of—Transfer—Credible information of order of stay of proceedings by High Court, procedure on receipt of—Bias—Cancellation of bail and remand to custody, on application for time to move for transfer.*—It is illegal to make a commitment in the absence of the accused. [illegible] accused under s. 526, cl. (8), for stay of proceedings pending an application to the High Court for transfer, immediately cancelled their bail and committed them to custody. In the matter of Surjya Narain Singh (1900) . . . . 5 C. W. N., 110

ACCUSED PERSON, RIGHT OF.

See Witness—Criminal Cases—Examination of Witnesses—Cross Examination;
[I. L. R., 28 Calc., 594

Summoning Witnesses.
[7 C. W. N., 188

ACKNOWLEDGMENT.

——of debt—

See Document—Alteration of.
[I. L. R., 25 Bom., 616

See Limitation Act, 1877—

ss. 5 and 19;
[I. L. R., 26 Bom., 782

s. 19—Acknowledgment of Debts; Sch. II, Art. 64.
[I. L. R., 23 All., 502
" 26 Mad., 186

ACKNOWLEDGMENT—*concluded.*

——of debt—*concluded.*

See Partnership—Dissolution of Partnership . I. L. R., 26 Bom., 42

See Stamp Act—

(I of 1879), Sch. I, Art. 1;
[I. L. R., 30 Calc., 687

(II of 1899), Sch. I, Art. 1;
[I. L. R., 23 All., 213

(II of 1899), Sch I, Arts. 1 and 5 . I. L. R., 25 Bom., 373

——of liability—

See Plaint—Amendment of Plaint.
[I. L. R., 30 Calc., 699

——of title—

See Limitation Act, 1877, s. 19—Acknowledgment of other Rights.
[I. L. R., 26 Mad., 34

ACQUIESCENCE.

See Arbitration—Reference or Submission to Arbitration.
[I. L. R., 28 Calc., 303

See Estoppel—Estoppel by Conduct.

See Landlord and Tenant—

Nature of Tenancy;
[I. L. R., 28 Calc., 738

Buildings on Land, etc.; Right to remove, and Compensation for Improvements.
[5 C. W. N., 846

See Mortgage—Construction—Usufructuary Mortgage.
[L. R., 29 I. A., 148

—*Landlord and tenant—Kabuliyat by one of several joint tenants—Rent-suit against recognised tenant alone—Bengal Tenancy Act (VIII of 1885), s. 65.*—Where one of several joint tenants executed a kabuliyat in favour of the landlord, and the other tenants acquiesced in the representation of the holding by the tenant who executed the kabuliyat, and [illegible]
[7 C. W. N., 170

ACQUISITION OF LAND.

See Land Acquisition Act.

ACQUITTAL.

See Appeal in Criminal Cases—Acquittals, Appeals from

See Compounding Offence.
[7 C. W. N., 176

See Confession—Confession subsequently retracted.
[6 C. W. N., 380

ACQUITTAL—*concluded.*

See CRIMINAL PROCEDURE CODE, s. 403. [I. L. R., 24 Mad., 641

See DISCHARGE OF ACCUSED.

See REFERENCE TO HIGH COURT—CRIMINAL CASES . . 7 C. W. N., 135 [I. L. R., 24 All., 346 „ 25 All., 128

See REVISION—CRIMINAL CASES—ACQUITTALS.

ACT.

See BENGAL ACT.

See BOMBAY ACT.

See MADRAS ACT.

See N.-W. PROVINCES AND OUDH ACT.

See STATUTES.

——application of, to Crown—

See MADRAS CITY MUNICIPAL ACT, s. 341. [I. L. R., 25 Mad., 457

— construction of—

See STATUTES, CONSTRUCTION OF.

——1841—XIX, ss. 3, 5, 8—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 24 Mad., 364

——1845—I—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE. [I. L. R., 30 Calc., 794

——1846—XI, s. 3, rules under—

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL. [I. L. R., 25 Bom., 667

——1847—IX, ss. 3 to 6—

See EVIDENCE—CIVIL CASES—MAPS. [I. L. R., 30 Calc., 291

——1855—XXVIII—

See INTEREST ACT (XXVIII OF 1855).

———————— s. 2—

See INTEREST—MISCELLANEOUS CASES—COMPOUND INTEREST. [7 C. W. N., 876

——1856—XV, ss. 2, 5—

See HINDU LAW—DISQUALIFICATIONS—RE-MARRIAGE [I. L. R., 26 Bom., 388

——1858—XXXI—

See MALIKANA . . 7 C. W. N., 846

———— XXXV—

See LUNATIC. [I. L. R., 30 Calc., 973 24 Mad., 504

ACT—*continued.*

——1858—XXXV—*concluded.*

Ss. 9, 10 and 11 discussed and explained. MUKUND KOERI *v.* DEPUTY COMMISSIONER OF CHOTA NAGPUR (1902) [I. L. R., 29 Calc., 638

——1859—X—

See BENGAL RENT ACT.

———XI—

See SALE FOR ARREARS OF REVENUE.

———————— ss. 3, 5, 6—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY. [7 C. W. N., 377

———————— ss. 5, 6, 7—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 30 Calc., 1

———————— s. 6—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY. [6 C. W. N., 526

———————— s. 9—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE. [I. L. R., 30 Calc., 794

———————— s. 33—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY; [6 C. W. N., 526 I. L. R., 30 Calc., 1

PARTIES. [7 C. W. N., 377

———————— s. 37, cl. fourth—

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859. [I. L. R., 30 Calc., 498

———————— s. 54—

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF . . I. L. R., 29 Calc., 223

——1859—XIII, ss. 1, 2—

—Failure to comply with order of Court—Criminal Procedure Code (Act V of 1898), s. 4 (o)—"Offence"—The offence created by the Workman's Breach of Contract Act (XIII of 1859) is not the neglect or refusal of the workman to perform his [illegible]

——1860—XLV—

See PENAL CODE.

ACT—*continued.*

—1860—XLVIII—

See POLICE ACT, 1860.

—1861—V—

See POLICE ACT, 1861.

—1863—XX (Religious Endowments).

See ARBITRATION—ARBITRATION UNDER SPECIAL ACT . I. L. R., 26 Mad., 361

1.—s. 5—*Vacancy in office of Manager—Appointment by Civil Court—Civil Procedure Code (Act XIV of 1882), s 622—Jurisdiction of High Court to entertain petition to revise order appointing Manager.*—An order made by a Civil Court under the powers conferred by s 5 of the Religious Endowments Act (XX of 1863) is a judicial

by a Civil Court, there must be a vacancy in the office, there must have been a transfer to the former trustee, and a dispute must have arisen respecting the right of succession to the office. The words in s. 5, "any dispute shall arise respecting the right of succession," apply to a case in which a question has arisen with reference to the person who is to succeed to the office; and the jurisdiction of the Civil Court under the section is not confined to cases in which a dispute has arisen respecting the right to succeed to the office GOPALA AYYAR *v.* ARUNACHALLAM CHETTY (1902) . I. L. R., 26 Mad., 85

2.—s. 14—*Suit for declaration—Maintainability when ancillary to claim for dismissal of manager—Ground of dismissal*—Bona fide *claim by manager to property of the institution*.—In a suit brought under the Religious Endowments Act (XX of 1863), a declaration that property belongs to an institution, and that a mortgage over it is not binding on the institution, may be asked for and made when it is ancillary to a claim for the removal of the manager. The plaintiffs in a suit under the Religious Endowments Act based their claim for the removal of a defendant from his office of manager of a mosque on the ground that he had set up a right of private property in the mosque

—s. 18—

See PAUPER SUIT.

[I. L. R., 24 Mad., 419

ACT—*continued.*

—1863—XX (Religious Endowments)—*continued.*

3.—s. 18—*Leave to sue—Leave to sue in High Court in case of neglect by trustee—Trustee of public charity—Acquisition by prescription of trusteeship with power to appoint successors.*—The trusteeship of certain public temples was handed down from *M* to his son, and then to his grandson, after which the younger brother of the grandson succeeded to the office. He, by will, appointed his sister and her husband as trustees to succeed him, and authorised them to appoint their own successors, thus diverting the devolution of the office from the family of the original trustee The sister and husband assumed office, but the husband died soon after. The sister continued to hold the office of trustee for over twenty-four years. She, by will, appointed as her successor her sister's son, who held office for twenty years, and, by will, appointed his son-in-law, the defendant, as his successor. Defen-

contained a provision for the appointment of a successor; and she had, acting under that provision, appointed a successor, giving him a similar power to appoint his own successor *Semble* that the title so acquired by the sister and her successor was not a hereditary trusteeship passing necessarily to their

neglect of duty on the part of a temple trustee. Such a suit is therefore maintainable without leave being obtained under s 18 of that Act *Semble*

[I. L. R., 24 Mad., 219

4. ——————*Leave to sue granted on application made by unverified letter, and not presented to Court by applicant or pleader—Validity—Civil Procedure Code (Act XIV of 1882), ss 622, 647—Maintainability of civil revision petition against order granting leave passed with material irregularity.*—Applications to District

ACT—*continued.*

——1863—XX (Religious Endowments)—*concluded.*

Courts under s. 18 of the Religious Endowments Act (XX of 1863) for leave to sue should be duly verified, and presented either by the applicant in person or by his pleader. A grant of such leave on an unverified application *not presented in Court* is a material irregularity within the meaning of s. 622 of the Code of Civil Procedure, and a civil revision petition lies from the order granting it. Omission to give notice of such an application to the person whom it is intended to sue does not of itself [illegible] *Venkatap-* [illegible] *1895),* [illegible] IIYAN *v.* [illegible] d., 685

5. ——————*Leave to institute suit—Necessity for showing exercise of control by Board of Revenue.*—For a Court to have jurisdiction to grant sanction, under s. 18 of the Religious Endowments Act (XX of 1863), to institute a suit, it is not necessary for it to be shown that the Board of Revenue has actually exercised control over the temple in question. *Muthu* v. *Gangathara, I. L. R., 17 Mad., 95,* explained. SATURLURI SEETARAMANUJA CHARYULU *v.* NANDURI SEETAPATI (1902)
[I. L. R., 26 Mad., 166

——1864—II—

See TRANSFER OF CIVIL CASE—LETTERS PATENT, HIGH COURTS, CL. 13.
[I. L. R., 27 Bom., 575

————III—

See WHIPPING.
[I. L. R., 25 Bom., 712

——1865—X—

See SUCCESSION.

——1869—I—

See OUDH ESTATES ACT.

————IV—

See DIVORCE ACT.

——1870—VII—

See COURT FEES ACT.

————X—

See LAND ACQUISITION ACT, 1870.

——1871—I—

See CATTLE TRESPASS ACT.

————XXIII—

See PENSIONS ACT.

——1872—I—

See EVIDENCE ACT.

————IV—

See PUNJAB LAWS ACT.

————IX—

See CONTRACT ACT.

ACT—*continued.*

——1873—X—

See OATHS ACT.

——1875—XVIII—

See LAW REPORTS ACT.

——1876—XI—

See PRESIDENCY BANKS ACT.

————XVII—

See OUDH LAND-REVENUE ACT.

——1877—I—

See SPECIFIC RELIEF ACT.

————III—

See REGISTRATION ACT.

————XV—

See LIMITATION ACT, 1877.

——1878—I—

See OPIUM ACT.

———— III—

See N.-W. PROVINCES LOCAL RATES ACT.

————XI—

See ARMS ACT.

————XII—

See PUNJAB LAWS ACT.

——1879—I—

See STAMP ACT, 1879.

————XVII—

See DEKKHAN AGRICULTURISTS' RELIEF ACT.

————XVII, ss. 3, 15A—

See MORTGAGE—CONSTRUCTION.
[I. L. R., 26 Bom., 252

————XVIII—

See LEGAL PRACTITIONERS' ACT.

————XXI—

See FOREIGN JURISDICTION ACT.

——1881—V—

See PROBATE AND ADMINISTRATION ACT.

————XII—

See N.-W. PROVINCES RENT ACT.

————XIV—

See OUDH COURTS ACT.

————XXVI—

See NEGOTIABLE INSTRUMENTS ACT.

——1882—IV—

See TRANSFER OF PROPERTY ACT.

————VI—

See COMPANIES ACT.

ACT—*continued.*

—1882—VI, ss. 169, 214—

See APPEAL—ACTS—COMPANIES ACT. [I. L. R., 30 Calc., 758

————XIV—

See CIVIL PROCEDURE CODE.

————————s. 2 "decree"—

See REMAND—CASES OF APPEAL AFTER REMAND . I. L. R., 26 Mad., 518

———— XV—

See SMALL CAUSE COURT, PRESIDENCY TOWNS.

—1883—XIX—

See LAND IMPROVEMENT LOANS ACT.

—1885—VIII—

See BENGAL TENANCY ACT.

————XVIII—

See LAND ACQUISITION ACTS, 1885 AND 1894.

—1886—II—

See INCOME-TAX ACT.

—1887—XII—

See BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT.

—1888—VI—

See INVENTIONS AND DESIGNS ACT.

—1889—VII—

See SUCCESSION CERTIFICATE ACT.

————IX—

See NORTH-WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS ACT.

—1890—VIII—

See GUARDIANS AND WARDS ACT.

————IX—

See RAILWAYS ACT.

————XI—

See PREVENTION OF CRUELTY TO ANIMALS ACT.

—1891—XIV—

See OUDH COURTS ACT, 1891.

—1892—VII—

See MADRAS CITY CIVIL COURT ACT.

—1893—IV—

See PARTITION—MISCELLANEOUS CASES.

ACT—*concluded.*

—1894—I—

See LAND ACQUISITION ACT, 1894.

—1895—III, s. 5—

See WHIPPING. [I. L. R., 25 Bom., 712

————XII—

See COMPANY—MEETINGS AND VOTINGS. [I. L. R., 27 Bom., 113

—1897—III—

See EPIDEMIC DISEASES ACT.

————VIII—

See REFORMATORY SCHOOLS ACT.

————IX—

See PROVIDENT FUNDS ACT.

—1898—V—

See CRIMINAL PROCEDURE CODE.

—1899—II—

See STAMP ACT, 1899.

————VI—

See CONTRACT (AMENDMENT) ACT, 1899.

————VIII—

See PETROLEUM ACT.

————IX—

See ARBITRATION ACT, 1899.

ACT OF STATE.

See HINDU LAW—CUSTOM—IMPARTIBILITY . I. L. R., 29 Calc., 828

See SECRETARY OF STATE. [I. L. R., 27 Bom., 189

ACTION IN REM.

See ADMIRALTY OR VICE-ADMIRALTY JURISDICTION. [I. L. R., 29 Calc., 402

ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.

See ACT OF STATE.

ADEN, COURT OF RESIDENT AT.

See TRANSFER OF CIVIL CASE—LETTERS PATENT, HIGH COURTS, CL. 13. [I. L. R., 27 Bom., 575

ADJOURNMENT.

See WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES. [I. L. R., 28 Calc., 37
„ 24 Mad., 200

ADJOURNMENT—*concluded.*

——of criminal trial—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.
[6 C. W. N., 717
I. L. R., 29 Calc., 211

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.
[7 C. W. N., 714

——of sale—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[6 C. W. N., 42, 46, 44

ADMINISTRATION.

See CERTIFICATE OF ADMINISTRATION.

See LETTERS OF ADMINISTRATION.

——suit for—

See HINDU LAW—REVERSIONERS—ADMINISTRATION SUIT BY.
[I. L. R., 29 Calc., 260

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 . I. L. R., 29 Calc., 315

——under Act XIX of 1841—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.
[I. L. R., 24 Mad., 364

1.—Adoption—*Practice—Pleadings—Administration, suit for—Will, construction of—Administration, prayer for, without asking for declaration with regard to an alleged adoption—Amendment—Adoption, preliminary trial of the question of.*—Suit for administration and construction of a will, under which plaintiff's interest was restricted in case a son was adopted to the testator. Plaint, *inter alia*, stated that plaintiff was informed that in *Jaisto* 1297 the widow of the testator purported to take in adoption a son, whose natural father was at the time and is now a Brahmo and had renounced the Hindu religion She submitted that such adoption was absolutely invalid and did not operate to pass any title to the adopted son. There was, however, no prayer asking for any declaration with regard thereto. *Held* that, upon the suit as at present constituted, the question of adoption was not in [illegible]

adoption, and should contain a prayer for a declaration as to the fact or validity thereof The whole substance in the claim for administration being dependent on the adoption being out of the way, [illegible]

ADMINISTRATION—*concluded.*

2.—Contested legacies—*Administration suits—Practice.*—With regard to particular legacies which may be contested, the usual course, in administration suits, is to deal with them when the case comes up for further directions on the report after the usual inquiries have been made as directed by the administration decree. FANINDRA KUMAR MITTER *v.* ADMINISTRATOR-GENERAL OF BENGAL (1901)
[6 C. W. N., 321

3.—Probate or Administration—*Will—Hindu will—Necessity of probate or letters of administration—Indian Succession Act (X of 1865), ss. 181 and 187.*—Notwithstanding the terms of s. 181 of the Indian Succession Act (X of 1865), a [illegible] the will of a Hindu

ADMINISTRATOR.

See LETTERS OF ADMINISTRATION.

son and heir of Anna De Silva, brought this suit, claiming to recover his share of the said property, alleging that it belonged absolutely to his mother. The second defendant (the purchaser from Graham [illegible] Anna De Silva. [illegible] her husband [illegible] for whom she [illegible] that, in any event, he had a good title as against the plaintiff

ADMINISTRATOR—*concluded.*

having purchased from the administrator of Anna De Silva's estate. *Held* that, assuming that the property did belong to Anna De Silva, the second defendant had acquired an indefeasible title to it by virtue of the conveyance to him to which her administrator was a party. Her interest in it had vested in her administrator under s. 179 of the Succession Act (X of 1865), and under s. 269 he could dispose of it as he might think fit. *Held also that, even if* Anna De Silva held the property as trustee, the second defendant was entitled. The legal estate passed to her administrator, and he conveyed to the second defendant, who also obtained the equitable estate when he received the title-deeds from Graham & Co. as assignees of the first defendant, who was one of the heirs of Anna De Silva and who asserted his own title to the whole property to the exclusion of the plaintiff. The second defendant's title was therefore complete unless he could have detected the falsehood of the first defendant's claim by reasonable diligence, and there was nothing to show that he could. DE SILVA *v.* DE SILVA (1902) . . I. L. R., 27 Bom., 103

ADMINISTRATOR GENERAL.

—*Administrator General of Bengal—Sanction to prosecute—Administrator to estate of deceased person—Public servant, offence by—Criminal Procedure Code (Act V of 1898), s. 197—Calcutta Municipal Act (Bengal III of 1899), ss. 320, 574.* —The Administrator General of Bengal, who was appointed by the High Court administrator to the estate of a deceased person, was served with a notice [illegible]

ment *Held* that the sanction of Government was not necessary for the institution of the prosecution, s. 197 of the Criminal Procedure Code not being applicable to a case like the present; that the Administrator General of Bengal was in charge of the premises, in respect of which the offence charged was said to have been committed, not by virtue of his office, but by virtue of his appointment by the Court as administrator to the estate of the deceased; and that he was charged with having committed the offence in the latter capacity. *Nando Lal Basak v. N. N. Mitter (1899), I. L. R., 26 Calc., 852,* followed. CORPORATION OF CALCUTTA *v.* ADMINISTRATOR GENERAL OF BENGAL (1903)
[I. L. R., 30 Calc., 927; s.c. 7 C. W. N., 750

ADMIRALTY OR VICE-ADMIRALTY JURISDICTION.

—*Admiralty jurisdiction—Arrest of a steamship, application for—Damage done "by a ship"—Maritime lien for damage—Injury caused to one*

ADMIRALTY OR VICE-ADMIRALTY JURISDICTION—*concluded.*

ship by wrongful act of another—Ship as "Instrument of mischief"—Action in rem—63 and 64 Vict., c. 27.—To establish a maritime lien for damage against a ship, the damage must be the direct result [illegible]

ADMISSION.

See ESTOPPEL.

——by legal practitioner—

See COUNSEL . . 6 C. W. N., 82

See PLEADER—AUTHORITY OF, TO BIND CLIENT . . . 7 C. W. N., 351

ADOPTION.

See HINDU LAW—

ADOPTION;

WILL—CONSTRUCTION OF WILLS—ADOPTION;

VESTED AND CONTINGENT INTERESTS . I. L. R., 29 Calc., 899

See LIMITATION ACT, 1877, SCH. II—

ART. 118;

ART. 119.

See SUCCESSION CERTIFICATE ACT, ss 6, 7 AND 9 . . I. L. R., 25 Bom., 523

——suit to set aside—

See DECLARATORY DECREE, SUIT FOR—ADOPTION . I. L. R., 30 Calc., 613

See LIMITATION ACT, 1877, s 3 AND SCH. II, ART. 118 . I. L. R., 24 Mad., 405

ADULTERATION.

——of food—

See Calcutta Municipal Act (Bengal Act III of 1899), s 495.
[I. L. R., 30 Calc., 643

ADULTERY.

See Divorce Act.

1.—Charge—*Complaint—Rape—Committal of accused on charge of rape—Addition by Sessions Judge of charge of adultery—Criminal Procedure Code (Act V of 1898), ss. 199, 227 and 238—Penal Code (Act XLV of 1860), ss. 376 and 497.*—Before a criminal charge of adultery can be preferred, a formal complaint of that offence must be instituted in the manner provided by s. 199 of the Criminal Procedure Code. Therefore, where an accused person was committed to the Sessions to stand his trial on a charge, preferred by a husband, of rape, under s. 376 of the Penal Code, and the Sessions Judge at the trial added a charge of adultery under s. 497 and acquitted the [illegible]

2.—Complaint—*"Complaint," meaning of—Prosecution for adultery or enticing away a married woman—Criminal Procedure Code (Act V of 1898), ss 4, cl. (h), 199.*—The word "complaint," [illegible]

3.—Marriage—*Penal Code (Act XLV of 1860), Ch. X, ss. 497, 498—Enticement—Marriage, de facto, if sufficient for conviction, where marriage illegal—Mahomedan law—Marriage with wife's uterine sister in wife's lifetime and within the period of* iddat *following the death of her first husband—Whether* nika *ceremony confers validity* [illegible]

unlawful upon both these grounds under Mahomedan law, the performance of the *nika* ceremony alone would not give the complainant the status of a husband in relation to the woman, and the conviction of the accused under ss 497, 498, Indian Penal Code, was bad. Danesh Sheikh *v.* Tayir Mandal (1902)
[7 C. W. N., 143

ADVERSE POSSESSION.

See Landlord and Tenant—Nature of Tenancy [I. L. R., 26 Mad., 488
„ 27 Bom., 515

See Limitation—Question of Limitation . I. L. R., 29 Calc., 664

See Limitation Act, 1877, s. 4.
[I. L. R., 29 Calc., 518

See Limitation Act, 1877, Sch. II—

Art. 134;
[I. L. R., 27 Bom., 363, 500

Arts 134 and 144;
[I. L. R., 27 Bom., 373

Art. 141;
[I. L. R., 23 All., 448

Art. 144—Adverse Possession;

Art. 147; I. L. R., 25 All., 35

Art. 148;
[I. L. R., 26 Bom., 500

See Onus of Proof—Limitation and Adverse Possession.
[I. L. R., 25 Bom., 362
„ 24 Mad., 441

See Possession—Adverse Possession.

ADVOCATE.

See Barrister.

See Counsel.

AGE.

——false representation as to—

See Estoppel—Estoppel by Conduct.
[I. L. R., 30 Calc., 539

——proof of—

See Evidence Act, s 32, cl. (5).
[I. L. R., 25 Mad., 184

AGENCY RULES.

See Rules made under Acts.
[I. L. R., 24 Mad., 345

AGENCY TRACTS, JURISDICTION OVER.

See High Court, Jurisdiction of—Madras—Civil.
[I. L. R., 26 Mad., 266

AGENT.

See Attorney and Client.
[I. L. R., 29 Calc., 595

See Possession, Orders of Criminal Court as to—Parties to Proceedings . . 7 C. W. N., 825

See Principal and Agent.

——acknowledgment of debt by—

See Limitation Act, 1877, s. 19—Acknowledgment of Debts.
[I. L. R., 25 Mad., 220

AGENT—*concluded.*

—authority of—

See LIMITATION ACT, 1877, s. 20.
[I. L. R., 29 Calc., 647

AGREEMENT.

See CONTRACT.

See CONTRACT ACT.

See KABULIYAT.

—acknowledging a debt—

See STAMP ACT (II OF 1899), SCH. I, ARTS. 1, 5 . I. L. R., 25 Bom., 373

—collateral to lease—

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . L. R., 29 I. A., 138

—for differences—

See CONTRACT—WAGERING CONTRACTS.
[I. L. R., 25 All., 38
" 29 Calc., 461

—for maintenance—

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO I. L. R., 25 All., 165

—for not enforcing payment of instalments—

See EXECUTION OF DECREE—EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES.
[I. L. R., 29 Calc., 810

—illegal—

See RECEIVER I. L. R., 30 Calc., 696

—in satisfaction of judgment-debt—

See CIVIL PROCEDURE CODE, s 257A.
[6 C. W. N., 27
I. L. R., 25 All., 317

—no bar to partition—

See HINDU LAW—PARTITION—PARTITION OF PORTION OF PROPERTY.
[I. L. R., 25 Mad., 585

—*of relinquishment, validity of*—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED . . 7 C. W. N., 688

—secret—

See ATTORNEY AND CLIENT.
[I. L. R., 26 Bom., 689

—to give time for satisfaction of judgment debt—

See CIVIL PROCEDURE CODE, s 257A
[I. L. R., 26 Mad., 19

—to pay interest—

See INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE.
[I. L. R., 30 Calc., 446

AGREEMENT—*concluded.*

—to re-convey on re-payment of purchase-money—

See VENDOR AND PURCHASER—MISCELLANEOUS CASES . 6 C. W. N., 192

—to refer to arbitration—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE
[I. L. R., 30 Calc., 218

—to remain united—

See HINDU LAW—PARTITION—EFFECT OF PARTITION . I. L. R., 30 Calc., 725

—to sell—

See CONTRACT ACT, s. 65.
[I. L. R., 25 All., 618

—unregistered—

See REGISTRATION ACT (III OF 1877), s 17 . I. L. R., 30 Calc., 783

[illegible]

AGRICULTURISTS' LOANS ACT (XII of 1884).

—s. 5—

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880), ss 2, ETC
[I. L. R., 29 Calc., 537

AIR.

See LIGHT AND AIR

ALIENATION.

See ATTACHMENT—ALIENATION DURING ATTACHMENT.

ALIENATION—*concluded.*

See CROWN LANDS. [I. L. R., 26 Mad., 268

See HINDU LAW—

ALIENATION;

ENDOWMENT—ALIENATION OF ENDOWED PROPERTY;

JOINT FAMILY—DEBTS, AND JOINT FAMILY BUSINESS;

JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS;

WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.

See NECESSITY FOR ALIENATION.

——by Court of Wards—

See OUDH LAND-REVENUE ACT (XVII OF 1876) . . 5 C. W. N., 881

——by Trustee—

See TRUSTEE—ALIENATION BY.

——of malikana rights—

See MALIKANA . 7 C. W. N., 846

——pending injunction—

See INJUNCTION—UNDER CIVIL PROCEDURE CODE I. L. R., 25 All., 431

ALIMONY.

See DIVORCE ACT, s. 36 [6 C. W. N., 414

ALLUVIAL LAND.

See ACCRETION.

ALTERATION.

——of bond—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY. [I. L. R., 25 All., 580

——of document—

See DOCUMENT—ALTERATION OF.

ALTERNATIVE.

——order framed in—

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION. [I. L. R., 25 All., 234

AMENDMENT.

——of plaint—

See PLAINT—AMENDMENT OF PLAINT.

ANCESTRAL ESTATE, SON'S INTEREST IN.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER. [I. L. R., 26 Bom., 326

See LEASE—CONSTRUCTION. [I. L. R., 28 Calc., 720

ANIMAL.

See PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890), s. 3. [I. L. R., 26 Bom., 609

——keeping, without license—

See BENGAL MUNICIPAL ACT (III OF 1884), ss. 263, 273. 5 C. W. N., 331

ANNUITY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION.

APPEAL.

See ABATEMENT OF SUIT—APPEALS.

See APPELLATE COURT.

See CLAIM TO ATTACHED PROPERTY. [6 C. W. N., 63

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE. [I. L. R., 30 Calc., 613

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15.

See LIMITATION ACT, 1877, s. 12 AND s. 5. [I. L. R., 25 Bom., 584, 586

See OUDH COURTS ACT, s. 8. [5 C. W. N., 781

See PARTIES—

ADDING PARTIES TO SUITS—RESPONDENTS; [I. L. R., 23 All., 331

SUBSTITUTION OF PARTIES—PLAINTIFFS. [I. L. R., 27 Bom., 162
" 28 Calc., 171

APPEAL—*continued.*

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION . . I. L. R., 25 All., 277

See PAUPER SUIT—APPEALS.

See PRACTICE—CIVIL CASES—APPEAL.

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895). [I. L. R., 30 Calc., 619

See RECEIVER I. L. R., 28 Calc., 790

See REMAND—CASES OF APPEAL AFTER REMAND.

See RIGHT OF APPEAL.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES. [I. L. R., 29 Calc., 548

See SPECIAL OR SECOND APPEAL.

See TRANSFER OF PROPERTY ACT, s. 89 [I. L. R., 29 Calc., 651

See VALUATION OF SUIT—SUITS—PARTITION; [I. L. R., 24 All., 381

APPEALS.

——abatement of—

See ABATEMENT OF SUIT—APPEALS.

——Bengal Tenancy Act—

See BENGAL TENANCY ACT, s 13 [6 C. W. N 190

See RES JUDICATA—ADJUDICATIONS [I. L. R., 28 Calc., 471

——by one defendant, reversal of whole decree on—

See CIVIL PROCEDURE CODE, s. 544. [I. L. R., 30 Calc., 429

——by some of joint appellants—

See CIVIL PROCEDURE CODE, s 544. [I. L. R , 25 Bom., 699

——consolidation of appeals—

See PRACTICE—CIVIL CASES—TEST CASE. [I. L. R., 29 Calc., 140

——costs—

See COURT-FEES ACT. [I. L. R., 28 Calc., 567

——decided by officer not empowered to hear it—

See GRANT—POWER TO GRANT. [I. L. R., 26 Mad., 742

——defect of parties—

See PARTIES—PARTIES TO SUITS—RENT, SUITS FOR, AND INTERVENORS IN SUCH SUITS . . 6 C. W. N., 186

APPEAL—*continued.*

——delay in presenting—

See MADRAS RENT RECOVERY ACT, s. 69. [I. L. R., 24 Mad., 558

——dismissal of, for default—order of dismissal is a "decree"—

See CIVIL PROCEDURE CODE, s. 2. [I. L. R., 30 Calc., 660

——from ex-parte decree—

See CIVIL PROCEDURE CODE, s. 108 [6 C. W. N., 109

——in formâ pauperis—

See LIMITATION ACT, 1877, s. 5. [I. L. R., 30 Calc., 790

——jurisdiction of High Court—

See MADRAS GENERAL CLAUSES ACT, s. 8. [I. L. R., 24 Mad., 39

——memorandum of—

See APPEAL—EXECUTION OF DECREES—QUESTIONS IN EXECUTION. [6 C. W. N., 283

See APPELLATE COURT—INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT. [I. L. R., 30 Calc., 501, 516

——orders—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s 622. [5 C. W. N., 192

See TRANSFER OF PROPERTY ACT, ss 88 AND 89 . I. L. R., 25 Mad., 244

——order refusing change of attorney—

See PRACTICE—CIVIL CASES—NEXT FRIEND I. L. R., 28 Calc., 264

——orders under Bengal Tenancy Act, ss. 105 and 106—

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS 5 C. W. N., 798

——pleading limitation in—

See LIMITATION ACT, 1877, SCH. II, ART. 179—LAW APPLICABLE TO APPLICATION FOR EXECUTION [I. L. R., 30 Calc., 761

——presentation of—

See LIMITATION ACT, 1877, s. 12 AND s. 5. [7 C. W. N., 109

——probate—

See LETTERS PATENT, HIGH COURTS, CL 15 [5 C. W. N., 781

——prosecution of, by representative of deceased person—

See MALICIOUS PROSECUTION [I. L. R. 26 Mad., 499

APPEAL—*continued.*

——re-hearing—
See CIVIL PROCEDURE CODE, s. 560.
[5 C. W. N., 816

——sale in execution of decree—
See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[6 C. W. N., 57

1. OMISSION TO APPEAL IN TIME AGAINST PRELIMINARY ORDER OR DECREE.

1.—*Partition suit—Preliminary order or decree—Whether omission to appeal against the preliminary order or decree within the period of limitation debars a party from questioning the preliminary order or decree in an appeal against the final decree—Code of Civil Procedure (Act XIV of 1882), s. 206.*—*Held* by the Full Bench (MACLEAN, C.J, and RAMPINI, J., dissenting) that, in an appeal against the final decree in a partition suit, it is open to the appellant to question the correctness of the preliminary order or decree for partition when no appeal was preferred against such order within the time allowed by law. *Boloram Dey* v. *Ram Chundra Dey (1895), I. L. R., 23 Calc., 279,* overruled. KHADEM HOSSAIN v. EMDAD HOSSAIN (1901)
[I. L. R., 29 Calc., 758: s.c., 5 C. W. N., 617

2. ACTS.

3.—Companies Act (VI of 1882), ss. 169, 214—*Notice of appeal—Appeal out of time.*—No appeal against an order made in the matter of the winding up of a Company under the Indian Companies Act of 1882 shall be heard by an Appellate Court unless notice of the same is given within three weeks after any order complained of has been made.

4.—Court-fees Act (VII of 1870), s. 12, para. i—*Class to which a suit belongs—Decision as to such class—Insufficient stamp—Appeal.*—S

on the plaint or memorandum of appeal. *In the matter of Omrao Mirza* v. *Mary Jones (1882), 12 C. L. R., 148; Chunia* v. *Ramdial (1877), I. L. R., 1 All., 360; Annamalai Chetti* v. *Cloete (1881), I. L. R., 4 Mad., 204; Kanaran* v. *Komuppan (1890), I. L. R., 14 Mad., 169; Dada Bhau Kittur* v. *Nagesh Ram Chandra (1896), I. L. R., 23 Bom., 486,* approved of. STUDD v. MATI MAHTO (1901)
[I. L. R., 28 Calc., 334

APPEAL—*continued.*

2. ACTS—*concluded.*

5. Probate and Administration Act (V of

the Chapter in which the section occurs. UMA CHARAN DAS v. MUKTAKISHI DASI (1900)
[I. L. R., 28 Calc., 149: s.c., 5 C. W. N., 443

3. ARBITRATION.

6.—*Decree in accordance with award—Civil Procedure Code (Act XIV of 1882), ss. 562, 622—Power of arbitrators—Error in law in award—Revision.*—References to arbitration are dealt with by Ch. XXXVII of the Civil Procedure Code under three heads:—(*a*) where the parties to

place without the intervention of the Court, and the

Court; so that no question can arise as to the

decision. They submitted their award, in which, amongst the other matters in dispute, they decided that the suit was cognizable by the Civil Court. Objections to the award were overruled, and an application to set it aside was refused by the Subordinate Judge, who, under s. 522 of the Civil Procedure Code, duly pronounced a decree in accordance with, and not in excess of, the award. The Chief Court ad-

APPEAL—*continued.*

3. ARBITRATION—*continued.*

made, and not having been corrected or modified, and the application to set it aside having been refused, the Subordinate Judge had no option but to pro-

[I. L. R., 26 Calc., 1...

c.s. (GHULAM JILANI v. MUHAMMAD HUSSAN) [6 C. W. N., 226 : L. R., 29 I. A., 51

7.—*Civil Procedure Code (Act XIV of 1882), ss. 506, 522—Reference to arbitration—Petition not joined in by all the parties to the suit—Legality of reference.*—In a suit for partnership accounts, two out of three defendants petitioned the Court, under s. 506 of the Code of Civil Procedure, to refer the matters in dispute to arbitration. The representatives of the third defendant (who was then deceased) were not parties to the application, which was, however, granted. An award was made,

REDDY v KANDADAI RAJAMANNAR AYYANGAR (1902) . . . . . I. L. R., 26 Mad., 47

8.—*Civil Procedure Code (Act XIV of 1882), s. 521—Petition by both parties, requesting the District Munsif to examine site and peruse documents and agreeing to abide by his decision—*

looked upon as an award And, as no reasons had

APPEAL—*continued.*

3. ARBITRATION—*concluded*

been shown for setting aside the award under s. 521 of the Code, the decree must be taken to have been passed in accordance with the award, and, as such, upheld. NIDHAMARTHI MUKKANTI v. THAMMANA RAMAYYA (1902) . I. L. R., 26 Mad., 76

4. CERTIFICATE OF ADMINISTRATION (ACT VII OF 1889).

9.—*Succession Certificate Act (VII of 1889), ss. 10, 19—Order extending certificate—"Order granting a certificate"*—The extension of a certificate under s. 10 of the Succession Certificate Act to additional debts is not the grant of a certificate so as to give a right of appeal under s. 19 of that Act against the extension. VENKATESWARULU v. BRAHMARAVUTU RAJA KRISTNAJI (1901) [I. L. R., 25 Mad., 634

5. DECREES.

10.—*Order dismissing objections to the execution*

UDDIN (1900) . . . I. L. R., 28 Calc., 81

11.—*Consent decree—Compromise—Civil Procedure Code (Act XIV of 1882), s. 375—Jurisdiction.*—When a decree is passed by consent of parties, the question as to whether or not the compromise decree is valid cannot be gone into on an appeal against that decree *Ashutosh Chandra v. Tara Prosonno Roy (1884), I L. R, 10 Calc., 612,* referred to *Brojo Durlab Singh v. Roma Nath Ghose (1897), 1 C. W. N., 597,* distinguished BIRAJ MOHINI DASI v. CHINTA MONI DASI (1901) [5 C. W. N., 877

6. DEFAULT IN APPEARANCE.

12.—*Civil Procedure Code, ss. 556, 558, 591—Order for re-admission of appeal dismissed for default not capable of being used by the appellant as a ground of objection to the decree.*—An order under s 558 of the Code of Civil Procedure, re-admitting an appeal which had been dismissed

APPEAL—*continued.*

6. DEFAULT IN APPEARANCE—*concluded.*

13.—*Civil Procedure Code, ss.* 157 *and* [illegible]

SINGH (1902) . . I. L. R., [illegible] All., 104

14.—*Counsel—Pleader—Dismissal of appeal for default—Appearance of appellants by pleader—* [illegible]

lowed. PATINHARE TARKATT RAMA MANNADI *v.* VELLUR KRISHNAN MENON (1902)
[I. L. R., 26 Mad., 267

15.—*Civil Procedure Code (Act XIV of 1882), ss. 103, 108 and 558—Application to restore—Prevented by sufficient cause from appearing—Power of Court to restore where sufficient cause not shown.*—The affirmative provisions in ss 103, 108 and 558 of the Code of Civil Procedure, that a [illegible]

is asked to exercise its discretion. SOMAYYA *v* SUBBAMMA (1903) . I. L. R., 26 Mad., 599

7. EX PARTE CASES

16.—*Civil Procedure Code (Act XIV of 1882), ss. 108, 562, 594 and 595 (a)*—Ex parte *decree—Appeal from order refusing application under s. 108, Civil Procedure Code—Remand under s. 562, Civil Procedure Code, appeal from order of—S 562, Civil Procedure Code, what can be remanded*

APPEAL—*continued.*

7. EX PARTE CASES—*concluded.*

under—Final order—Interlocutory order.—In an appeal from an order refusing to set aside a decree under s 108, Civil Procedure Code. on the [illegible]

KISSEN *v.* COLLECTOR OF JAUNPORE (1900)
[5 C. W. N., 153: s.c., L. R., 28 I. A., 28: I. L. R., 23 All., 220

17.—*Civil Procedure Code, ss. 89, 100, 104—Ex parte decree—Service of summons on defendant residing out of British India—Burden of proof*—Where a defendant against whom an *ex parte* decree has been passed appeals against that decree, it is sufficient in the first instance to establish that in the Court which passed the *ex parte* decree the necessary proof of service of summons on the [illegible]

[illegible]

18.—*Civil Procedure Code, ss. 80, 108—Application to set aside a decree passed ex parte—Irregular service of summons.*—Where a serving officer finds a defendant to be away temporarily from home, and knows where he is, it is not a good service if he thereupon does no more than fix the summons to the outer door of the house; but he must make further efforts to effect personal service SAKINA *v.* GAURI SAHAI (1902) . I. L. R., 24 All., 302

19.—*Civil Procedure Code, ss. 558, 591—Order setting aside an ex parte decree—Order not "affecting the decision of the case."*—*Held* that an order under s 108 of the Code of Civil Procedure, [illegible]

of the Code *Chintamony Dassi* v. *Raghoonath* [illegible]

APPEAL—*continued.*

8. EXECUTION OF DECREE.

(*a*) QUESTIONS IN EXECUTION.

20.—Memorandum of appeal—*Code of Civil Procedure (Act XIV of 1882), ss. 2, 244.*—An order determining any question referred to in s. 244, Civil Procedure Code, is a decree under s 2, Civil Procedure Code. When, therefore, an appeal is preferred against such an order, it is sufficient to attach to the memorandum of appeal a copy of the order itself, and it is not necessary to attach to the memorandum a

[6 C. W. N., 283

[I. L. R., 26 Bom., 121

22.——————*Civil Procedure Code (Act XIV of 1882), ss 244, 258—Decree—Order—Appeal—Mortgage decree, question regarding satisfaction of, when no application for execution pending*—Where a Court deals with a question relating to the discharge or satisfaction of a decree,

23.——————*Civil Procedure Code (Act XIV of 1882), s. 244—Order by High Court directing District Court to take account of amount due under mortgage—Order by District Court declaring amount due.*—The High Court, by its decree, directed a District Court to take an account of the amount due to a decree-holder under a mortgage. The District Court accordingly took the account, and passed an order declaring, in Court, under s. 88 of the Transfer of Property Act, the

[I. L. R., 26 Mad., 237

24.—Possession—*Specific Relief Act (I of 1877), s. 9—Decree for possession—Order in execu-*

shall lie from any order or decree passed in any suit" under that section, and, by the Explanation to

APPEAL—*continued.*

8. EXECUTION OF DECREE—*continued.*

(*a*) QUESTIONS IN EXECUTION—*continued.*

25.—Sale—*Decree—Sale in execution—Civil Procedure Code (Act XIV of 1882), ss 310A and 244 (c)—Order refusing to set aside a sale—Appeal from such order*—An appeal lies from an order passed under s 310A of the Civil Procedure Code (Act XIV of 1882), refusing to set aside a sale, where the dispute relates to the execution, discharge or satisfaction of a decree and thus comes within s. 244 (*c*) of the Code MURLIDHAR *v* ANANDRAO (1900) . . . I. L. R., 25 Bom., 418

26.———*Sale in execution—Purchase by decree-holder—Application for amendment of sale certificate.*—A decree-holder applying for execution of his decree asked for a 2 annas 8 pies ... be put ... sale, and ... at the ... to him in ... decree-holder applied for amendment of the sale certificate, which was refused him. He then appealed against the order of the Court refusing to amend. *Held* that no appeal lay from such order, either under

27.———*Joint decree—Sale in execution—Purchase by decree-holders—Receipt for part of decretal money given by one decree-holder on behalf of both—Sale set aside—Civil Procedure Code, ss 244, 294, 311*—Two persons holding a joint decree caused certain immovable property of their judgment-debtor to be sold, and, having obtained permission to bid, themselves became the

the decree should be entered up; he at the same

application was rejected; but the Subordinate

APPEAL—*continued.*

8. EXECUTION OF DECREE—*continued.*

(*a*) QUESTIONS IN EXECUTION—*continued.*

Judge, instead of confirming the sale, set it aside, on the ground that only one of the decree-holders auction-purchasers had put in the receipt under the second clause of s 294, and directed a re-sale, and this notwithstanding that the other decree-holder admitted that the receipt had been presented on his behalf also. On appeal to the District Judge, the order of the Subordinate Judge was set aside, and an

28.————*Execution of decree—Objection by judgment-debtor that more had been delivered to the auction-purchaser than was included in his sale certificate—Objection disallowed—Civil Procedure Code, s. 244*—Certain landed

fall within
ire, and was
d v. *Locke*
i *Hira Lal*
I. L. R., 13
Calc, 326, referred to RAM ADHAR *v.* NARAIN DAS (1902) I. L. R., 24 All., 519

29.———— *Order—Civil Procedure Code (Act XIV of 1882), ss. 244, 287 (e)—Value specified*

[I. L. R., 30 Calc., 617

30. Transfer for execution—*Civil Procedure Code, ss. 232 and 295—Sale of decree, and transfer for*

APPEAL—*continued.*

8 EXECUTION OF DECREE—*continued.*

(*a*) QUESTIONS IN EXECUTION—*concluded.*

prayer in this case is to be allowed a rateable share of the assets in Bindesri Prasad's case, let this case be put with that case." *Held* (1) that the Court to which the decree was transferred for execution had no power to entertain the transferee's application for a rateable share in the assets; such application could only be entertained by the Court which

(*b*) PARTIES TO SUITS.

31.—*Civil Procedure Code (Act XIV of 1882), s. 583—Application for restitution of property—Execution of decree of Appellate Court—Decree, whether capable of execution against,*

to the decree and who has not derived any interest subsequent to such decree. *Bhagwati Prasad* v.

32.—*Civil Procedure Code (Act XIV of 1882), ss. 244, cl. (c), 278, 280, 283—Defendants exempted from decrees—Questions relating to execution, discharge or satisfaction of decree—Claim to attached property.*—Defendants, who are exempted from the operation of a decree, are not parties to the suit within the meaning of s 244, cl (*c*), of the Civil Procedure Code, and there is therefore no appeal from an order disallowing a claim preferred by them to properties attached in execution of the decree. RAM PERSHAD *v.* JAGANNATH RAM (1902)

[I. L. R., 30 Calc., 134; s.c., 6 C. W. N., 10

33.—*Death of decree-holder—Representative brought on record at a late stage*—The decree-

APPEAL—*continued.*

8. EXECUTION OF DECREE—*concluded.*

(*b*) PARTIES TO SUITS—*concluded.*

also, that it was not incumbent on the appellant to apply for execution to the Court which passed the decree He had adopted the proper procedure in applying to the High Court to be brought on the record; and, an order having been passed, bringing him on the record, he was competent to present the appeal. RAGHUNATHA THATHA CHARIAR *v.* VENKATESA TAWKER (1902)

[I. L. R., 26 Mad., 101

9. NORTH-WESTERN PROVINCES ACTS.

34.—Act XIX of 1873 (North-Western Provinces Land-revenue Act), s. 114—*Partition—Order refusing to stay partition——Jurisdiction of High Court—Held* that, under s 114 of the North-Western Provinces Land-revenue Act, the High Court can only entertain appeals from orders and decisions whereby the rights of parties are declared No power is given to the High Court to restrain the Collector or Assistant Collector from entertaining an application for perfect partition MUNAWAR ALI *v.* SHAKIRAT-UN-NISSA BIBI (1902) . . I. L. R., 25 All., 141

35.—Act XII of 1881 (North-Western Provinces Rent Act), s. 189—*Suit for rent—Appeal admissible where the question has been whether any rent at all was payable by the defendant—Held* that the words in s 189 of the North-Western Provinces Rent Act, 1881,

and has been determined *Deo Charan Singh v. Beni Pathak (1899), I L. R, 21 All, 247,* referred to. BENI PRASAD KUARI *v.* BATULAN BIBI (1901) . . . I. L. R., 23 All, 283

36. ——— *Act XII of 1887 (Bengal Civil Courts Act), s 10—Jurisdiction—Powers of Subordinate Judge in charge of the office* ... *Revenue Court appeal—*

...rary ... office ... and ...ding ... ALI

..., 455

10 ORDERS.

37.—Order admitting review.—The admis-

38.—Order amending decree—*Order amending a decree not in conformity with the judgment—Appeal from such an order—Decree—Review of judgment—Civil Procedure Code (Act XIV of*

APPEAL—*continued.*

10. ORDERS—*continued.*

1882), ss. 206, 588, 622, 624.—There is no appeal from an order, under s 206 of the Code of Civil

NALINAKSHYA GHOSAL *v.* MAFAKSHAR HOSSAIN (1900)

[I. L. R., 28 Calc., 177

39.—Order awarding compensation—*Civil Procedure Code (Act XIV of 1882), ss. 491, 588—Attachment before judgment*—There is no appeal from an order awarding compensation under s 491 of the Code of Civil Procedure. NARASINGA BHAKSHI *v* GOVINDA BHAKSHI (1900)

[I. L. R., 24 Mad., 62

40.—Order declaring suit to have abated—*Civil Procedure Code, ss. 368, 588 (18)*—*Held*

41.—Order in insolvency—*Civil Procedure Code, ss. 2, 351, 589—Order in insolvency made by Subordinate Judge*—An appeal against an order in insolvency, passed under s. 351 of the ... Court of Small Causes

either the value of the decree in respect of ... order in insolvency was obtained or the amount of the

42.—Order in Small Cause suit—*Subordi-*

43.—Order refusing application to be declared insolvent—*Civil Procedure Code (Act*

APPEAL—*continued.*

10. ORDERS—*continued.*

XIV of 1882), ss. 344, 345, 588 (17) and 589—Application to be declared an insolvent—Subject-matter of the suit over R5,000 in value—First Class Subordinate Judge—Rejection of the application—Appeal—District Court.—In a suit, the subject-

lay to the District Court under ss. 588, cl. (17), and 589 of the Civil Procedure Code (Act XIV of 1882) *Venkatrayer* v. *Jamboo Ayyan (1892), I L. R, 17 Mad, 377,* not followed. MANEKSHAH SORABJI GANDHI *v* DADABHAI JAMSHETJI (1903)
[I. L. R., 27 Bom., 604

44.—Order rejecting a plaint—*Civil Procedure Code, ss. 562, 558*—Where the first Court rejected the plaint on the ground of misjoinder of causes of action and of defendants, and the lower

r and
Held
. 588
Civil
Procedure Code. RAM PROSAD *v.* SACHI DASSI (1902) . . . . 6 C. W. N., 585

s. 11.—S 588 (6) of the Code of Civil Procedure refers, not only to orders passed by a Court of first instance, but to similar orders which an Appellate Court may pass by virtue of s 582 of the Code. Where an order returning a plaint for amendment, or to be presented to the proper Court, is passed by a Court of Appeal, an appeal will lie from such order, in the manner provided by s 589 of the Code.

46.—Order of remand—*Bengal Tenancy Act (VIII of 1885), s 109 A—Appeal from an order of remand passed by a Special Judge—Civil Procedure Code (Act XIV of 1882), s 588*—An appeal does not lie from an order of remand passed by a Special Judge under the Bengal Tenancy Act

APPEAL—*continued.*

10. ORDERS—*continued*

MOTHUR CHANDRA MAJUMDAR *v.* TARA SUNKAR GHOSE (1903) . . . 7 C. W. N., 440

47.—Order under Mad. Act VIII of 1865 (Rent Recovery), ss. 10, 69—*Adjudication that plaintiff has failed to prove default by defendant—"Judgment."*—An order passed under

VENKATA PAPAYYA RAO *v.* VENKATA SUBBAYYA (1901) . . . . I. L. R., 25 Mad., 453

48.—Order under Mad. Reg. III of 1802,

49.—Order under s. 244, Civil Procedure Code—*Civil Procedure Code (Act XIV of 1882), s. 232—Order refusing to recognise transferee of decree—Appeal*—An order passed under s 232 of the Civil Procedure Code, refusing to recognise the transferee of a decree, may, for purposes of appeal, be regarded as an order passed under s. 244, and is therefore appealable. *Virasami Rowth* v. *Bodi Naikan (Appeal against Appellate Order No 60 of 1899—unreported)*, followed SUBBUTHAYAMMAL *v.* CHIDAMBARAM ASARI (1901)
[I. L. R., 25 Mad., 383

50. ———— *Purchase of mortgaged property by mortgagee—Application by purchaser to recover possession as against defendants who held possession under prior sale based on prior mortgage—Question raised whether purchaser could recover possession without first paying defendants amount of prior mortgage—"Execution and enforcement of decree"—Appeal.*—A mortgagee obtained a decree directing the sale of property in the possession of certain defendants, subject

these defendants, and an appeal lay from an order passed thereon. *Per* MOORE, *J.*—Even if the purchaser had not been also the decree-holder, he would have been a representative of a judgment-creditor. *Per* BHASHYAM AYYANGAR, *J.*—The order was not the less an order under s. 244 because it was also

APPEAL—*continued.*

10 ORDERS—*concluded.*

passed under ss °18 and 334 of the Code. KASINATHA AYYAR *v.* UTHUMANSA ROWTHAY (1901)
[I. L. R., 25 Mad., 529

51.————————*Determination of question whether party applying for execution is representative of decree-holder.*—The effect of the last clause of s 244 of the Code of Civil Procedure is to give the right of appeal against an order determining whether a party applying for execution is or is not the representative of the decree-holder. KRISHNAMA CHARIAR *v.* APPASAMI MUDALIAR (1901)
[I. L. R., 25 Mad., 545

52.—Order under s. 372, Civil Procedure Code—*Civil Procedure Code, ss. 2, 372, 588(21)*— [illegible] under s 372—Order or

[illegible]

was brought on the record. [illegible] have been treated as also an appeal from the decree in the suit, and the Court made an order under s 562 of the Code, remanding the suit for trial on the merits *Held*, on appeal from this order, that no appeal lay to the lower Appellate Court from the order of the Court of first instance allowing the defendants' objection to Chabeli Ram's application under s 372 of the Code of Civil Procedure; neither was such order a decree within the meaning of s. 2 *Moti Ram v. Kundan Lal (1900), I. L. R., 22 All., 350*, and *Indo Mati v Gaya Prasad (1896), I. L. R., 19 All., 142*, distinguished. *Lalit Mohan Roy v. Shebock Chand Chowdhry (1900), 4 C. W. N., 403*, referred to. TEJ SINGH *v* CHABELI RAM (1902) . . . . I. L. R., 24 All., 342

53.————————*Civil Procedure Code, ss.* [illegible]

[illegible]

APPEAL—*continued.*

11. SALE IN EXECUTION OF DECREE.

54.—Order setting aside sale—*Civil Procedure Code (Act XIV of 1882), ss. 244 (c), 310A—Order setting aside sale in execution of decree.*—An order under s. 310A of the Civil Procedure Code is one under s. 244, cl. (*c*), of that Code, and therefore an appeal lies from that order at the instance of the decree-holder who is also the auction-purchaser *Kripa Nath Pal v. Ram Laksmi Dasya, 1 C. W. N., 703*, followed PHUL CHAND RAM *v.* NURSINGH PERSHAD MISSER (1899)
[I. L. R., 28 Calc., 73

12. OBJECTIONS BY RESPONDENT.

55.—Cross-objection—*Civil Procedure Code (Act XIV of 1882), s 561—Cross-objection against* [illegible] *(XV of 1877), s 5.*

[illegible] *Mukerjee v.* [illegible] *R., 25 Calc.,* [illegible] ORAT KOER (1903) . . . . I. L. R., 30 Calc., 655

56.—Objections by appellant—*Civil Pro-* [illegible] *of* [illegible] *fact* [illegible] *—Held* [illegible] Civil [illegible] might [illegible] below, [illegible] who [illegible] dis- [illegible] prefer objections under s 561 to the decree [illegible] Court below. RAMJI DAS *v.* AJUDHIA PRASAD (1903)
[I. L. R., 25 All., 628

57.—Objections against persons not appealing—*Civil Procedure Code, s. 561—Objections filed by respondents, against persons who did not appeal against them, inadmissible* —The objections allowed to be urged by a respondent under s. 561 of the Code of Civil Procedure are limited to the person who has appealed against him; [illegible] enlarged by [illegible] sons of other [illegible] in the list at [illegible] *ukoy, S. D. A.,* [illegible], referred to. *Timmayya Mada v. Lakshmana Bhakta (1883), I. L. R., 7 Mad., 215*, distinguished. KALLU *v.* MANNI (1900) . . . . I. L. R., 23 All., 93

APPEAL—*concluded.*

12. OBJECTIONS BY RESPONDENT—*concld.*

58.—Withdrawal of appeal—*Civil Procedure Code, ss. 373, 561—Right of appellant to withdraw his appeal at any time before judgment.*—Where no objections under s. 561 of the Code of Civil Procedure have been filed by the respondent, an appellant has an absolute right to

[I. L. R., 23 All., 130

59.—Stamp duty—*Court-fees Act (VII of 1870), ss. 4, 16—Stamp duty on memorandum of objections—When payable.*—Stamp duty on a memorandum of objections filed by a respondent, in an appeal under s 561 of the Code of Civil Procedure, need not, under s. 16 of the Court-fees Act, be paid till the time of hearing REFERENCE UNDER COURT-FEES ACT, 1870, s 5 (1901)
[I. L. R., 25 Mad., 24

APPEAL IN CRIMINAL CASES.

See FIRST OFFENDERS
[I. L. R., 24 All., 306

See HABEAS CORPUS, WRIT OF.
[I. L. R., 29 Calc., 236

See JUDGMENT—CRIMINAL CASES.
[7 C.W. N., 30

See MAGISTRATE—RE-TRIAL OF CASES.
[I. L. R., 29 Calc., 412

See PRACTICE—CRIMINAL CASES - RULE TO SHOW CAUSE . 7 C. W. N., 80

See RECOGNIZANCE TO KEEP PEACE—CANCELLING ORDER.
[I. L. R., 30 Calc., 101

See SANCTION FOR PROSECUTION—REVOCATION OF SANCTION.
[I. L. R., 30 Calc., 394

See SESSIONS JUDGE, JURISDICTION OF—ORDER FOR RE-TRIAL ON APPEAL.
[7 C. W. N., 301

See UNLAWFUL ASSEMBLY.
[5 C. W. N., 31

——power to set aside conviction of accused not appealing—

See REVISION—CRIMINAL CASES.
[5 C. W. N., 33

APPEAL IN CRIMINAL CASES—*continued.*

1. ACQUITTALS, APPEALS FROM.

1.—Misdirection—*Criminal Procedure Code (Act V of 1898), ss. 423 (2), 537—Trial by jury—Verdict and order of acquittal—Appeal against acquittal—Jurisdiction of High Court to consider the evidence—Evidence of accomplices.*—In a charge, against an Inspector of Salt and Abkari,

and in his presence, and in the presence of two other persons who were in the employment of the witness.

but they were challenged by the accused as false

appeal being preferred by the Public Prosecutor

the High Court, in such circumstances, to order

14 Bom.,
5 Suth.
Khan v.
and *Ali*
Fakir v. *Queen-Empress, I. L. R., 25 Calc., 230,* commented on. EMPEROR *v.* SMITHER (1902)
[I. L. R., 26 Mad., 1

APPEAL IN CRIMINAL CASES—*continued.*

1. ACQUITTALS, APPEALS FROM—*concluded.*

2.—Reversal of order—*Criminal Procedure Code (Act V of 1898), s. 423—Power to "reverse the finding and sentence"—Reversal by Deputy Magistrate of an order acquitting accused on a charge of theft—Validity*—A Deputy Magistrate has no power, under s. 423 of the Code of Criminal Procedure, to reverse an order acquitting an accused person of a charge of theft. The words "reverse the finding and sentence," in cl. 1 (*b*) of that section, mean reverse the finding upon which a conviction is based, and do not empower the Appellate tribunal (or, at any rate, an Appellate tribunal other than the High Court) to reverse or set aside an acquittal. *Queen-Empress* v. *Jahanulla, I. L. R., 23 Calc., 975*, explained. SAMI AYYA v. EMPEROR (1902)
[I. L. R., 26 Mad., 478

2. CRIMINAL PROCEDURE CODE

3.—Alteration of finding—*Act V of 1898, ss. 195, 198 and 423—Powers of Appellate Court—Alteration of finding—Question whether accused is prejudiced by alteration—Act XLV of 1860, ss. 182 and 500*—*Held* that an Appellate Court, when it acts under s 423 (1) (*b*) of the [illegible]

aggrieved, as would be binding on a Court of first [illegible]

4.—Enhancement—*Act XLV of 1860 (Indian Penal Code), s. 70—Act V of 1898, s. 423—Alteration of sentence in appeal*— [illegible]

APPEAL IN CRIMINAL CASES—*continued.*

2. CRIMINAL PROCEDURE CODE—*continued.*

Empress v. *Chagan Jagannath (1898), I. L. R., 23 Bom., 439*, dissented from. KING-EMPEROR v. SAGWA (1901) . . I. L. R., 23 All., 497

5.————*Act V of 1898, s 423 (b)*—*Conviction of two accused, and order against both accused to pay Court and process fees in equal shares—Acquittal of one accused on appeal—Order by Appellate Court for entire Court and process fees—Legality—"Enhancement of sentence."*—A [illegible]

process fees. *Held* that the order of the Appellate Court was legal under s 423 (*d*) of the Criminal [illegible]

6.—Restoration of property—*Immovable property—Possession, order by Subordinate Magistrate restoring—Appeal—Jurisdiction—Magistrate of first class specially empowered to hear appeals—Consequential or incidental order—Act V of 1898, ss. 423, cl. (d), and 522, and Act X of 1882, s 423.*—*Held* that a Magistrate of the [illegible]

7.————*Restoration of property order for—Act V of 1898, ss. 517, 520.*—An order by a Magistrate directing the restoration of property in respect of which no offence has been found to have been committed, to the person in [illegible]

8.—Right of way—*Act V of 1898, s. 423—Right of way, interference with—Order for*

APPEAL IN CRIMINAL CASES—*continued.*

2. CRIMINAL PROCEDURE CODE—*concluded.*

preserving status quo ante *on conviction, if proper—Appellate Court, power of, to set aside such order—Penal Code (Act XLV of 1860), s. 341—*

blocked up a

laint had a

convicted of

der s. 341 of

[O. C. W. N., 102]

9.—Whipping—*Act V of 1898, ss 391, 407—Sentence of whipping by second-class Magistrate—Appeal—Application for postponement of sentence till hearing of appeal—Refusal—Validity*—When a second-class Magistrate passes a sentence of whipping only, without imprisonment, he has no power to postpone the execution of the sentence pending an appeal by the accused It is only when

appealable

to be post-

edure Code.

[I. L. R., 25 Mad., 465

3 PRACTICE AND PROCEDURE.

rioting. That was the only charge before the

11.—Assessors and Jury—*Act V of 1898, ss. 269 and 418—Offence triable with the aid of*

APPEAL IN CRIMINAL CASES—*concluded.*

3. PRACTICE AND PROCEDURE—*concluded.*

assessors tried in fact by a jury—Trial by jury—Appeal on a matter of fact.—Under s. 418 of the Criminal Procedure Code (V of 1898), no appeal lies on matters of fact, where an accused person is

appeal lay in this case on matters of law only, and not on matters of fact. *Per* JENKINS, *C.J.*—The words in s 418 of the *Criminal Procedure Code, 1898,* "where the trial was by jury" mean "where the trial in fact was by jury" and not "when the trial should have been by jury." KING-EMPEROR *v.* PARBHUSHANKAR (F.B. 1901)

[I. L. R., 25 Bom., 680

12.—Dismissal of appeal—*Act V of 1898, s. 421—Summary dismissal of appeal of accused,*

DAS (1901) 5 C. W. N., 552

13.—Question of law raised for the first time in appeal—*Practice—Objection to prosecution, on a question of law raised for the first time in appeal, given effect to.*—Objection to the

APPEAL TO PRIVY COUNCIL.

APPEAL TO PRIVY COUNCIL—*continued*

See COSTS—SPECIAL CASES—APPEAL.
[I. L. R., 27 Bom., 124

See PRIVY COUNCIL, PRACTICE OF.

——**cases in which an appeal lies or not —appealable orders**—

See APPEAL—EX PARTE CASES
[5 C. W. N., 153

——**criminal cases**—

See BAIL . . I. L. R., 24 Mad., 161

1. CASES IN WHICH APPEAL LIES OR NOT.

(a) APPEALABLE ORDERS.

1.—Order under s 206, Civil Procedure Code—*Leave to appeal to Privy Council—Letters Patent, 1865, cl 39—"Order made on appeal"—Amendment of decree, application for—Civil Procedure Code (Act XIV of 1882), ss. 206, 595 and 596*—An order passed by the High Court, rejecting an application under s 206 of the Civil Procedure Code to amend a certain decree of the Court, is not an order "made on appeal," and is therefore not appealable to His Majesty in Council. *Soudamonee Dossee* v. *Maharaj Dheraj Mahatab Chand Bahadoor (1866), 6 W. R. (Misc. R.), 102,* and *Rajah Enaet Hossein* v. *Ranee Rowshun Jahan (1868), 10 W. R. (F. B.), 1,* referred to. SUNDER KOER *v.* CHANDISHWAR PROSAD SINGH (1903) . . . I. L. R., 30 Calc., 679

2.—Order under s. 562, Civil Procedure Code—*Civil Procedure Code, s. 595—Appeal to His Majesty in Council—Appeal from an order under s. 562 o[illegible]—Held* that an order [illegible] of being the [illegible] Council though [illegible]

[illegible]

NISSA (1903) . . . I. L. R., 25 All., 629

(b) SUBSTANTIAL QUESTIONS OF LAW.

3.—Affirmance of decision of lower Court—*Civil Procedure Code (Act XIV of 1882), s 596—Decree of Appellate Court that* [illegible]

[illegible] like the word "judgment," be defined as meaning [illegible] statement of the grounds on which the Court proceeds to make the decree In order to "affirm the decision of the Court below," within the meaning of that section, it is sufficient for the Appellate Court to affirm

APPEAL TO PRIVY COUNCIL—*continued.*

1. CASES IN WHICH APPEAL LIES OR NOT —*continued*

(b) SUBSTANTIAL QUESTIONS OF LAW—*continued.*

the *decree*: it need not also affirm the grounds of fact on which the judgment was passed Where the decree of the Appellate Court was that "the appeal be dismissed," but the reasons given were not the s[illegible] lower Court in respect of some

[illegible]

s.c., L. R., 30 I. A., 35; 7 C. W. N., 177

[illegible] Civil Proce-

[illegible]

presence of such a question does not give a right of appeal when the value is below the mark; the Code *restricts the right of appeal when the higher Court* affirms the decision of the lower and the dispute either directly or indirectly relates to an amount of R10,000. Under ss 595 and 600, Civil Procedure Code, there is a right of appeal if the High Court certifies that the case is "otherwise" a fit one for appeal The word "otherwise" refers to special cases, such as, where the point in dispute is not measurable by money, though it may be of great public or private importance *But in all such cases* a special certificate to that effect must be granted by the High Court The mere assent of the respondent to an appeal does not give the appellant a right of [illegible]

[illegible]

s.c., L. R., 28 I. A., 11; I. L. R., 23 All., 227

5.—Concurrent judgments on facts—*Civil Procedure Code, s 596—Application for leave to appeal to Her Majesty in Council.*—The expression "involve some substantial question of law," as used in s. 596 of the Code of Civil Procedure, must be construed with reference to the practice of the Privy Council not to interfere with concurrent findings of fact of the Courts below; and [illegible] said that a question which [illegible] the [illegible] an [illegible] ins those concurrent findings of fact [illegible] ial

APPEAL TO PRIVY COUNCIL— *continued.*

1. CASES IN WHICH APPEAL LIES OR NOT *—continued.*

(*b*) Substantial Questions of Law—*continued.*

question of law" which the appeal to the Privy Council "involves." *Moran* v. *Mittu Bibee (1876), I. L. R., 2 Calc., 228; Gopi Nath Birbar* v. *Goluck Chunder Bose (1884), I. L. R., 16 Calc., 292, note,* and *In re Vishwambhar Pandit (1895), I. L. R., 20 Bom., 699,* referred to. Banke Lal *v.* Jagat Narain (1900) . **I. L. R., 23 All., 94**

6. ———— *Civil Procedure Code (Act XIV of 1882), s. 596—Concurrent decisions on facts—Leave granted where no substantial question of law was involved.*—Where, on an appeal to the Privy Council, there were two concurrent decisions of the Courts below, on facts sufficient to dispose of the suit, but the High Court had granted leave to appeal, stating that "there seems to be a point of law

[illegible]

7. Malicious prosecution—*Practice—Civil Procedure Code (Act XIV of 1882), s. 600—Certificate that appeal to the Privy Council involves a question of law.*—In an action for malicious prosecution, in which the plaintiff claimed R3,00,000 as damages, the Court of first instance dismissed the suit, holding that the

[illegible]

under a misapprehension. The only question involved was a question of fact on which there were concurrent findings. According to English Law, it is for the Judge and not for the jury to determine what is reasonable and probable cause in an action for malicious prosecution. The jury finds the facts. The Judge draws the proper inference from the

[illegible]

[I. L. R., 25 Bom., 332

APPEAL TO PRIVY COUNCIL— *continued.*

1. CASES IN WHICH APPEAL LIES OR NOT *—continued.*

(*b*) Substantial Questions of Law—*concluded.*

8.—Registrar's report—*Civil Procedure Code (Act XIV of 1882), s. 595—Privy Council, leave to appeal to—Order refusing to vary or discharge report of Registrar—Belchambers' Rules and Orders, rule 617—Substantial question of law.*—Where a Court, under rules 615 and 617 of Belchambers' Rules and Orders (2nd Ed.), merely refused to re open a Registrar's report: *Held* that such decision is a final decree within the meaning of s 595, Civil Procedure Code, and that it does not impose any pecuniary liability on applicant. Royal Insurance Co. *v.* Akhoy Coomar Dutt (1901) . . . . . **6 C. W. N., 41**

(*c*) Concurrent Judgments on Facts.

9.—Concurrent findings—*Appeal to His Majesty in Council—Leave to appeal—Concurrent findings of fact—Civil Procedure Code (Act XIV of 1882), s 596.*—Where there are concurrent findings of the lower Court and of the High Court upon questions of fact, and no question of law arises, a certificate giving leave to appeal to His Majesty in Council should not be granted. Sakalboti Mandarain *v.* Babulal Mundar (1901)

[5 C. W. N., 455

10. ———— *Certificate as to fitness for*

[illegible]

High Court and of the lower Court upon questions of fact, and when upon such findings no question of law arises *Tulsi Persad Bhakt* v. *Benayek Misser (1896), I. L. R., 23 Calc., 918 : L. R., 23 I. A., 102,* followed. Sakalboti Mandarain *v.* Babulal Mundar (1901)

[I. L. R., 28 Calc., 190

(*d*) Valuation of Appeal.

11.—*Civil Procedure Code, s. 596—Appeal to His Majesty in Council—Decree involving indirectly some question respecting property of the value of ten thousand rupees or upwards.*—When, as in s 596 of the Code of Civil Procedure, it is laid down that, in order that an appeal may lie to His Majesty in Council, the decree to be appealed from must involve, directly or indirectly, some claim or question to or respecting property of ten thousand rupees in value or upwards, the reference is to suits in existence. It is not enough that the question decided by such decree is a question of title which may possibly affect the title of persons, who are not parties to the decree, to property not the subject-matter of the suit in which the decree was passed, and concerning the title to which property there is no litigation pending. *Radha Krishn Das* v. *Rai Krishn Chand (1901),*

APPEAL TO PRIVY COUNCIL—*continued.*

1. CASES IN WHICH APPEAL LIES OR NOT—*concluded.*

(*d*) VALUATION OF APPEAL—*concluded.*

I. L. R., 23 All., 415, Banarsi Prasad v. *Kashi Krishna Narain (1901), I. L. R., 23 All., 227; Moofti Mohummud Ubdoolla* v. *Baboo Mootechund (1837), 1 Moo. I. A., 363*, and *Baboo Gopal Lall Thakoor* v. *Teluk Chunder Rai (1860), 7 Moo. I. A., 548*, referred to. HANUMAN PRASAD *v.* BHAGWATI PRASAD (1902)

[I. L. R., 24 All., 236

2. PRACTICE AND PROCEDURE.

(*a*) LEAVE TO APPEAL.

12.—Certificate—*Civil Procedure Code (Act XIV of 1882), ss. 595, 596 and 600—Certificate where case is "otherwise" fit for appeal.*—In considering under what section of the Civil Procedure Code the certificate of fitness was given by the Court, it is the certificate itself which has to be looked at, and not the order for the certificate. In granting a certificate under s. 600, Civil Procedure Code, the Court must exercise its judicial discretion upon the matter. Unless the certificate upon which the leave to appeal is based is in such a form as to justify that leave, the Court must find that leave was not properly given, and the appeal must be dismissed. *Banarsi Parshad* v. *Kashi Krishna Narain (1900), 5 C. W. N., 193*, referred to. RADHA KRISHN DAS *v.* RAI KRISHN CHAND (1901) . . . 5 C. W. N., 689

[s.c., I. L. R., 23 All., 415;
L. R., 28 I. A., 182.

13.—Separate Suits—*Valuation of appeal in three similar but unconsolidated suits.*—Where an application for leave to appeal to the Privy Coun-

14.—Test—*Application for leave to appeal*— ... (*XII* ... passed ... *Code* ... *Case* ... mpany ... ltering the Memorandum of Association was dismissed by

APPEAL TO PRIVY COUNCIL—*continued.*

2. PRACTICE AND PROCEDURE—*concluded.*

(*a*) LEAVE TO APPEAL—*concluded.*

meaning of cl. (*b*) of s. 595. *Held* further that,

TRADING CORPORATION, LD. *v.* DORABJI CURSETJI SHROFF (1903) . . I. L. R., 27 Bom., 415

(*b*) MISCELLANEOUS CASES.

16.—Certificate of appeal.—A certificate of appeal, given pursuant to ss. 595 (*c*) and 600 of the

[L. R., 30 I. A., ...

17.—Limitation—*Practice—Order refusing to admit an appeal—Act XV of 1877 (Limitation), s. 5—"Sufficient cause."*—On January 19, 1897, the

within the meaning of s. 5 of the Limitation Act (XV of 1877). *Held* that this order could not be set aside unless shown to be wrong, however serious the consequences may have been. RAM NARAIN JOSHI *v.* PARMESWAR NARAIN MAHTA (1902)

[L. R., 30 I. A., 20:
s.c., I. L. R., 30 Calc., 309

APPEAL TO PRIVY COUNCIL —*concluded.*

3. STAY OF EXECUTION PENDING APPEAL.

18.—*Civil Procedure Code (Act XIV of 1882), ss. 603, 608.*—An application for stay of execution [illegible]

[5 C. W. N., 602

APPEARANCE.

—default in—

See Appeal—Default in Appearance.

See Civil Procedure Code, s. 99 [I. L. R., 26 Bom., 201

See Recognizance to Appear. [I. L. R., 30 Calc., 107

APPELLANT.

—death of—

See Abatement of Suit—Appeals. [I. L. R., 26 Bom., 597
„ 25 All., 27

See Appeal—Orders. [I. L. R., 24 All., 532

See Civil Procedure Code, s. 544 [I. L. R., 27 Bom., 284

See Parties—Substitution of Parties—Appellants [I. L. R., 26 Bom., 317

APPELLATE COURT.

See Appeal.

See Appeal in Criminal Case.

See Appeal to Privy Council.

See Execution of Decree—Stay of Execution . 5 C. W. N., 781 [I. L. R., 28 Calc., 734

See Remand—Power of Remand. [I. L. R., 23 All., 167

See Special or Second Appeal.

See Valuation of Suit—Appeals

APPELLATE COURT—*continued.*

—errors affecting or not merits of case—

See Civil Procedure Code, s. 244—Questions in Execution of Decree. [5 C. W. N., 627

—powers of—

See Commissioner for taking Accounts. [5 C. W. N., 692

See Joinder of Charges. [5 C. W. N., 866

—power of, to make decree in respect of parties not appealing—

See Civil Procedure Code, s. 544. [I. L. R., 27 Bom., 284

—power of, to make order requiring security to keep the peace—

See Recognizance to keep Peace—Magistrate with Powers of Appellate Court . I. L. R., 29 Calc., 393

—upsetting findings of fact by first Court—

See Witness—Civil Cases—Consideration and Weight of Evidence. [6 C. W. N., 513

1. GENERAL DUTY OF APPELLATE COURT.

1.—*Order of Appellate Court returning plaint for presentation to proper Court—Act VII of 1887 (Suits Valuation), s. 11.*—Where an Appellate Court makes an order returning a plaint for presentation to the proper Court, the Court of first [illegible]

the suit on the merits. Wahid-Ullah *v.* Kanhaya Lal (F B. 1902) . I. L. R., 25 All., 174

2. EXERCISE OF POWERS.

[illegible]

Civil Procedure Code, to allow an amendment of the plaint. [illegible]

[illegible]

Mukherjee *v.* Narendra Krishna Mukerjee (1900) . . . . . 5 C. W. N., 273

APPELLATE COURT—*continued.*

3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

3.—Additional evidence—*Civil Procedure Code, ss. 584, 568—Appeal—Admission of additional evidence—Discretion of Court.*—The refusal by an Appellate Court to exercise the discretion vested in it by s. 568 of the Code of Civil Procedure with respect to the admission of additional evidence would be an error or defect in procedure, within the meaning of s 584 of the Code, because s 568 distinctly implies that discretion must be exercised. But a refusal, in the exercise of discretion, to admit additional evidence is undoubtedly not such an error or defect RAM PIARI *v.* KALU (1900) . . I. L. R., 23 All., 121

4.—Evidence of application before Criminal Court—*Limitation Act (XV of 1877), s 26—Right of way—Application before a Criminal Court, admissibility in evidence of—Civil Procedure Code (Act XIV of 1882), s. 568—Additional evidence.*—In a suit for declaration of

Criminal Court, complaining of the obstruction in question; and the first Appellate Court relied on the petition, although it was not produced before the first Court and was not marked as an exhibit by the ... the ... Code ... the ... llate ... ATH ..., 31

4. ERRORS AFFECTING OR NOT MERITS OF CASE.

5.—Misjoinder—*Misjoinder of parties—Misjoinder of causes of action—Assault by two persons, on the same occasion, on two other persons—Joint plaintiffs—Joint defendants.*—*Held* that, although the defendants had not really been prejudiced by the misjoinder, it was impossible to hold that the case fell within s 578 of the Civil

5 INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT.

6.—Court-fee—*Decree—Memorandum of appeal, amendment of—Civil Procedure Code (Act XIV of 1882), ss. 53, 582—Court-fees Act (VII of 1870).*—In the generality of cases, an Appellate Court cannot pass a decree for a larger amount than that claimed in the memorandum of appeal, unless,

APPELLATE COURT—*continued.*

5. INTERFERENCE WITH, AND POWER TO VARY, ORDERS OF LOWER COURT —*concluded.*

7. ——————— *Decree—Memorandum of appeal, valuation of—Land Acquisition Act (I of 1894), suit under—Court-fees Act (VII of 1870), ss 8, 11.*—In cases under the Land Acquisition Act (I of 1894), the decree awarded in appeal must be limited to the amount for which court-fee has been paid on the memorandum of appeal. MAHOMED ALI AMJAD KHAN *v.* SECRETARY OF STATE FOR INDIA (1903) . . I. L. R., 30 Calc., 501

8.—Grounds arising after decree—*Power of Court of Appeal to vary decree on grounds arising subsequently to decree.*—It is open to the

ASPANDYARJI SETHNA *v.* SHETH PURSHOTAMDAS CHATURDAS (1901) . I. L. R., 25 Bom., 606

6. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

SPECIAL CASES.

9.—Evidence—*Judgment not inter partes—Objection to its admissibility not taken in the first Court—Whether such an objection is allowable at a later stage of the case.*—Where no objection was taken in the Court of first instance as to the admissibility in evidence of a document, but on the contrary reference was made to it by the defendant in the written statement as affording a

KUMARI CHOWDHURANI (1900) [I. L. R., 28 Calc., 142

10.—Limitation.—The lower Appellate Court was empow ... of limitatic ... defence in ... CHOWDHUR... [I. L. R., 28 Calc., 86; s.c., 5 C. W. N., 160

11.—Notice of sale—*Practice—Point not taken in plaint or at settlement of issues—Right*

APPELLATE COURT—*concluded.*

6. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*concluded.*

SPECIAL CASES—*concluded.*

Rent Recovery Act (Madras Act VIII of 1865) had not been served upon him, he should not be allowed to raise it on appeal SUBBIEN v. RAMASAMI CHETTY (1902) . . . I. L. R., 26 Mad., 363

APPLICATION.

—by person not a party to suit—

See DIVORCE ACT (IV OF 1869). [I. L. R., 30 Calc., 490

See DIVORCE ACT (IV OF 1869), ss. 7, 11, 45 . . . I. L. R., 30 Calc., 489

—for adjournment of trial—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES—APPLICATION FOR ADJOURNMENT OF TRIAL BEFORE HEARING.

—for amendment of decree—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . I. L. R., 30 Calc., 679

—for enlargement of time—

See MORTGAGE—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—REDEMPTION AFTER EXPIRY OF TIME. [I. L. R., 26 Bom., 121

—for execution of decree—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT.

—for execution of decree, limitation of—

See CIVIL PROCEDURE CODE, s. 230. [I. L. R., 26 Mad., 91

See LIMITATION ACT, 1877, SCH. II—ART. 179; ART. 180.

—for refund of amount of ex parte decree set aside—

See LIMITATION ACT, 1877, SCH. II, ARTS. 178, 179 . I. L. R., 28 Calc., 113

—for re-hearing appeal—

See CIVIL PROCEDURE CODE, s. 560. [5 C. W. N., 816

—to set aside award—

See LIMITATION ACT, 1877, SCH. II, ART. 158 . . . 5 C. W. N., 813

APPOINTMENT.

See PLEADER—APPOINTMENT AND APPEARANCE.

—of guardian; absence of formal order of appointment—

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 30 Calc., 1031

—power of—

See COURT-FEES ACT, SCH. I, ART. 11. [I. L. R., 25 Mad., 515

APPORTIONMENT.

—of compensation—

See LAND ACQUISITION ACTS (XVIII OF 1885 AND I OF 1894). [I. L. R., 30 Calc., 801

See LAND ACQUISITION ACT (I OF 1894), ss. 11, 18, 31 AND 33 7 C. W. N., 538

—of mortgage debt—

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING. [I. L. R., 30 Calc., 755

—of rent—

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY. [I. L. R., 26 Mad., 540

—*Landlord and tenant—Basis of apportionment of rent—Assets.*—An apportionment of rent should not be on the basis of the assets of the different villages at the time of the creation of the original tenure, but on the basis of the present assets of the different portions of the tenure which by division have passed into different hands HARI KISHEN BHAGAT v. TILUKDHARI LAL (1903) . . . 7 C. W. N., 453

APPRAISEMENT PROCEEDINGS.

See N.-W. PROVINCES RENT ACT (XII OF 1881), s. 43 . I. L. R., 25 All., 282

APPROVERS.

See ACCOMPLICE.

See CHARGE TO JURY—MISDIRECTION. [I. L. R., 29 Calc., 782
6 C. W. N., 553

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES [I. L. R., 25 Bom., 422

—*Evidence of.*—The evidence of an accused person who has confessed, and has been admitted or is likely to be admitted as an approver and who has been detained in police-custody up till the time of trial, is open to the greatest suspicion that the police have arranged his statements so as to fit in with any evidence that they may have obtained elsewhere. Case in which the High Court

APPROVERS—*concluded.*

acquitted a person who had been convicted by the lower Court of dacoity on the evidence of an approver who had been in police-custody up till the time of trial, and where other evidence corroborating the same was found to be too weak to support a conviction. AMIR KHAN *v.* KING-EMPEROR (1902) . . . . . 7 C. W. N., 457

ARBITRATION.

See APPEAL—ARBITRATION.

See LEASE—CONSTRUCTION—PROVISION FOR RENEWAL I. L. R., 30 Calc., 831

See LIMITATION ACT, 1877, SCH. II, ART 158 . . . 5 C. W. N., 813

See MINOR—REPRESENTATION OF MINOR IN SUITS I. L. R., 26 Bom., 298

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION . 7 C. W. N., 461

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [6 C. W. N., 614

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s 622. [I. L. R., 26 Bom., 551

—— construction of award—

See LIFE ESTATE . 5 C. W. N., 569

——destruction of landmarks erected by—

See LANDMARKS. [I. L. R., 30 Calc., 1084

—— enhancement of rent by—

See BENGAL TENANCY ACT, s 30 [6 C. W. N., 614

ARBITRATION—*continued.*

——reference to—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE. [I. L. R., 30 Calc., 218
" 26 Bom., 76

——withdrawal of suit after—

See WITHDRAWAL OF SUIT. [7 C. W. N., 186

1. ARBITRATION UNDER SPECIAL ACT.

1.—*Religious Endowment Act (XX of 1863), s. 16—Suit for the removal of trustee—Reference of entire suit to arbitrator—Legality.*—Under s. 16 of the Religious Endowments Act, a Court may refer any matter in difference in the suit for decision by an arbitrator, but it is not open to the Court to refer the whole suit. KAREDLA VIJAYARAGHAVA PERUMALAYYA NAIDU *v.* VEMAVARAPU SITARAMAYYA (1902) . . I. L. R., 26 Mad., 361

2. REFERENCE OR SUBMISSION TO ARBITRATION.

2.—Agreement to refer—*Civil Procedure Code (Act XIV of 1882), ss. 375, 462, 525—Agreement to refer to arbitration during pendency of suit—No order of reference made by Court—Power to give effect to agreement in the suit.*—During the pendency of a suit for partition between [illegible]

[illegible] reference was not, however, asked for, or made by [illegible]

[illegible] sion related to the rights of minors, who were [illegible]

[illegible] was to take away from the Court the power of adjudicating upon the rights of the minors, and to leave such adjudication to a private tribunal. Such an agreement fell within s. 462 of the Code of [illegible]

APPELLATE COURT—*concluded.*

6 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*concluded.*

SPECIAL CASES—*concluded.*

Rent Recovery Act (Madras Act VIII of 1865) had not been served upon him, he should not be allowed to raise it on appeal. SUBBIEN *v.* RAMASAMI CHETTY (1902) . . . I. L. R., 26 Mad., 363

APPLICATION.

——by person not a party to suit—

See DIVORCE ACT (IV OF 1869). [I. L. R., 30 Calc., 490

See DIVORCE ACT (IV OF 1869), ss. 7, 11, 45 . . I. L. R., 30 Calc., 489

——for adjournment of trial—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES—APPLICATION FOR ADJOURNMENT OF TRIAL BEFORE HEARING.

——for amendment of decree—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . I. L. R., 30 Calc., 679

——for enlargement of time—

See MORTGAGE—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—REDEMPTION AFTER EXPIRY OF TIME. [I. L. R., 26 Bom., 121

——for execution of decree—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT.

——for execution of decree, limitation of—

See CIVIL PROCEDURE CODE, s. 230. [I. L. R., 26 Mad., 91

See LIMITATION ACT, 1877, SCH. II—ART. 179; ART. 180.

——for refund of amount of ex parte decree set aside—

See LIMITATION ACT, 1877, SCH. II, ARTS. 178, 179 . I. L. R., 28 Calc., 113

——for re-hearing appeal—

See CIVIL PROCEDURE CODE, s. 560. [5 C. W. N., 816

——to set aside award—

See LIMITATION ACT, 1877, SCH. II, ART. 158 . . . 5 C. W. N., 813

APPOINTMENT.

See PLEADER—APPOINTMENT AND APPEARANCE.

——of guardian; absence of formal order of appointment—

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 30 Calc., 1021

——power of—

See COURT-FEES ACT, SCH. I, ART. 11. [I. L. R., 25 Mad., 515

APPORTIONMENT.

——of compensation—

See LAND ACQUISITION ACTS (XVIII OF 1885 AND I OF 1894). [I. L. R., 30 Calc., 801

See LAND ACQUISITION ACT (I OF 1894), ss. 11, 18, 31 AND 33 7 C. W. N., 538

——of mortgage debt—

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING [I. L. R., 30 Calc., 755

——of rent—

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY. [I. L. R., 26 Mad., 540

—*Landlord and tenant—Basis of apportionment of rent—Assets.*—An apportionment of rent should not be on the basis of the assets of the different villages at the time of the creation of the original tenure, but on the basis of the present assets of the different portions of the tenure which by division have passed into different hands HARI KISHEN BHAGAT *v* TILUKDHARI LAL (1903) . . . 7 C. W. N., 453

APPRAISEMENT PROCEEDINGS.

See N.-W. PROVINCES RENT ACT (XII OF 1881), s. 43 . I. L. R., 25 All., 282

APPROVERS.

See ACCOMPLICE.

See CHARGE TO JURY—MISDIRECTION. [I. L. R., 29 Calc., 782 6 C. W. N., 553

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES. [I. L. R., 25 Bom., 422

—Evidence of.—The evidence of an accused person who has confessed, and has been admitted or is likely to be admitted as an approver and who has been detained in police-custody up till the time of trial, is open to the greatest suspicion that the police have arranged his statements so as to fit in with any evidence that they may have obtained elsewhere. Case in which the High Court

APPROVERS—*concluded.*

acquitted a person who had been convicted by the lower Court of dacoity on the evidence of an approver who had been in police-custody up till the time of trial, and where other evidence *corroborating the same was found to be too weak to* support a conviction. AMIR KHAN *v.* KING-EMPEROR (1902) . . . . . 7 C. W. N., 457

ARBITRATION.

See APPEAL—ARBITRATION.

See LEASE—CONSTRUCTION—PROVISION FOR RENEWAL I. L. R., 30 Calc., 831

See LIMITATION ACT, 1877, SCH. II, ART. 158 . . . 5 C. W. N., 813

See MINOR—REPRESENTATION OF MINOR IN SUITS I. L. R., 26 Bom., 298

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION . 7 C. W. N., 461

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[6 C. W. N., 614

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 26 Bom., 551

— **construction of award**—

See LIFE ESTATE . 5 C. W. N., 569

— **destruction of landmarks erected by**—

See LANDMARKS.
[I. L. R., 30 Calc., 1084

— **enhancement of rent by**—

See BENGAL TENANCY ACT, s. 30.
[6 C. W. N., 614

ARBITRATION—*continued.*

— **reference to**—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 30 Calc., 218
” 26 Bom., 76

— **withdrawal of suit after**—

See WITHDRAWAL OF SUIT.
[7 C. W. N., 186

1. ARBITRATION UNDER SPECIAL ACT.

1.—*Religious Endowment Act (XX of 1863),* [illegible]

PERUMALAYYA NAIDU *v.* VEMAVARAPU SITARAMAYYA (1902) . . I. L. R., 26 Mad., 361

2. REFERENCE OR SUBMISSION TO ARBITRATION.

2.—Agreement to refer—*Civil Procedure Code (Act XIV of 1882), ss. 375, 462, 525—Agreement to refer to arbitration during pendency of suit—No order of reference made by Court—Power to give effect to agreement in the suit.*— [illegible]

reference was not, however, asked for, or made by [illegible]

was to take away from the Court the power of adjudicating upon the rights of the minors, and to [illegible]

ARBITRATION—*continued.*

2. REFERENCE OR SUBMISSION TO ARBITRATION—*continued*

the Code of Civil Procedure, and obtained under similar circumstances, would be invalid—*Quære.* LAKSHMANA CHETTI *v.* CHINNATHAMBI CHETTI (1900) . . I. L. R., 24 Mad., 326

3. ——— *Civil Procedure Code (Act XIV of 1882), s. 375, Ch. XXXVII, ss. 506 and 523—Agreement to refer to arbitration—"Adjustment of suit" within the meaning of s. 375—Agreement not in writing—Agreement to refer pending suit*—Upon the petition of a party to an agreement to refer to arbitration matter in

completion and filing of the decree" This order is of the nature of an order under Ch XXXVII of the Civil Procedure Code, but, where such agreement to refer to arbitration is not in writing, neither s. 506 nor s 523 of the Code of Civil Procedure applies. Further, s 523 does not apply to an agreement to refer where there is a pending suit. *Ghulam Khan* v *Muhammad Hassan (1901), 6 C. W. N., 225,* referred to *Harivalab Das Kalliandas* v. *Uttam Chand Manick Chand (1879), I L. R., 4 Bom., 1,* dissented from *Per* MACLEAN, C.J —

whether an agreement to refer to arbitration would under no circumstances be an adjustment of a suit such as is contemplated by s. 375, Civil Procedure Code FAKIR CHAND DEY *v.* TINCOWRI DEY (1902) . . . . 7 C. W. N., 180

4.—Appeal—*Award—Appeal from decree based on an award—Civil Procedure Code, s. 506—"All the parties to the suit"*—*Held* that the words "all the parties to a suit," in s 506 of the Code of Civil Procedure, refer to the succeeding words of the same section "any matter in difference between them in the suit," and would not necessarily include parties who never put in any appearance in the Court, and between whom and any of the

[I. L. R., 24 All., 220

5.—Application—*Award—Acquiescence—How far a defendant, not a party to an application for reference to arbitration, is bound by his conduct.*—In a suit brought by the plaintiffs for recovery of possession of certain immovable property on a declaration of title thereto, a reference was made to arbitration. One of the defendants (defendant No. 2) did not join in the reference, and did not take any part in the proceedings before the arbitrators, although it appeared that he, in obedience to a

award. *Held* that it was so, and that the conduct of defendant No. 2 was not such that it could be said that he was bound by the award by reason of acquiescence BENI MADHUB MITTER *v.* PREONATH MANDAL (1900)

[I. L. R., 28 Calc., 303: s.c., 5 C. W. N., 268

6. ——— *Civil Procedure Code (Act XIV of 1882), s. 506—Reference to arbitration—Application by pleader not specially authorised.*—Where a pleader, who made the application for

Saturjit Pertap Bahadoor Sahi v. *Dulhin Golab Koer (1897), I L. R., 24 Calc., 469,* distinguished. SHEO DAS MISSER *v.* BIRJ NANDAN PERSHAD (1902) [7 C. W. N., 343

7.—Reference by manager of joint Hindu family—*Hindu law—Joint Hindu family—Power of manager to refer a dispute to arbitration—Award—Minors bound by the award*—A manager of a joint Hindu family, even when he is not the father, has the power to bind the family by a reference of a dispute, with any outsider, regarding any family property, to arbitration, provided such reference be for the benefit of the family. Minors in the family are bound by the reference, and consequently by the award made upon it. BALAJI NARAYAN GOKHALE *v.* NANA BIN BABAJI GHATGE (1903) . . I. L. R., 27 Bom., 287

3. DUTIES AND POWERS OF ARBITRATORS.

8.—Action after award—*Award—Arbitrator, powers of—Entry by arbitrator after award made—Devolution of property, alteration of, by arbitrator.*—Where a plaintiff seeks to enforce an

award, and that Art. 91, Sch. II, of the Limitation Act does not apply. An entry made by an arbitrator in the schedule of the property, after he had made his award, to the effect that a particular portion had been given to the defendant as dower and was her separate property, is no part of his award, and confers no title on the defendant. An arbitrator has no power to alter the devolution of property in a mode at variance with the ordinary principles of the law governing the parties, in the absence of a special custom prevailing in the family. He has no power to make property which is divisible

ARBITRATION—*continued.*

3. DUTIES AND POWERS OF ARBITRATORS —*concluded.*

by law indivisible for ever. JAFRI BEGUM *v.* SYED ALI REZA (1901) . . 5 C. W. N., 585 [s.c., I. L. R., 23 All., 383; L. R., 28 I. A., 111

9.—**Irregularity**—*Irregularity not misconduct—Right of arbitrator to delegate his ministerial duties—Invalid portion of award rejected if separable.*—Where a reference to arbitration included primarily certain specific points, as to [illegible] nt, in [illegible] other [illegible] them [illegible] nd the [illegible] it the [illegible] f the [illegible] iatters [illegible] were intended to be dealt with: *Held* that the omission to bring this information to the knowledge of the [illegible]

[illegible] party the performance of acts of a ministerial character, *so long as he exercises his own judgment on* [illegible]

4. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION.

[illegible] either s. 510 or s. 514, an order superseding the reference to arbitration. JAMNA KUNWAR *v.* NASIB ALI (1902) . . I. L. R., 24 All., 312

ARBITRATION—*continued*

5. AWARDS.

(*a*) CONSTRUCTION AND EFFECT OF.

11.—*Reference to arbitration by the parties*— [illegible]

[illegible] which w [illegible] finding t [illegible] *Held* fi [illegible] Procedur [illegible] PROTAP [illegible]

(*b*) ENFORCING AWARDS.

12.—**Specific enforcement**—*Specific performance—Suit on an award not a suit for specific performance of a contract—Limitation—Act XV of 1877 (Indian Limitation Act), Sch. II,* [illegible]

13. ——— *Suit for specific enforcement of award—Case in which compensation in money considered impossible to assess.*—The defen- [illegible]

[illegible] award having been performed, the lessee sued for specific performance of the remainder. He filed with his plaint a number of decrees obtained by him against the tenants, together with a sale-deed conveying those decrees to the defendant, and prayed that the

ARBITRATION—*continued.*

5. AWARDS—*continued.*

(*b*) ENFORCING AWARDS—*concluded.*

defendant might be ordered to accept the conveyance and pay the amounts of the decrees. *Held* that, even if the award were bad, the defendant, having acted on it and accepted the benefits it gave him, had precluded himself from impeaching it; also that the case was not one in which it was possible to assess compensation in money for the breach of the particular condition in the award, and that the plaintiff was entitled to specific performance of the award, and this was directed in terms of the order made in the case of *Bell* v. *Denver (1886), 54 Law Times Reports, 729.* BRIJ MOHAN LAL *v.* SHIAM SINGH (1901)

[I. L. R., 24 All., 164

(*c*) VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE.

14.—Award beyond the terms of reference—*Ultra vires award.*—An award that goes beyond the terms of reference to the arbitrators is to that extent *ultra vires.* MOHAMMED MUMTAZ ALI KHAN *v.* SAKHAWAT ALI KHAN (1901) **5 C. W. N., 881**: [s.c., **I. L. R., 23 All., 394; L. R., 28 I. A., 190**

criminal proceedings at Indore were then withdrawn. On the 21st June, 1898, the first and second defendants filed a suit against the first three plaintiffs, in

ARBITRATION—*continued.*

5. AWARDS—*continued.*

(*c*) VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE—*continued.*

question whether the award was rendered invalid by

plaintiffs had not shown that they had reasonable

JENKINS, C.J.—In a suit of this nature, three

[I. L. R., 25 Bom., 10

not sign the award, although it purported to have

17. ——————— *Arbitrator, am-muktear of one of the parties—Indebtedness of arbitrator to a party—Judicial misconduct—Civil Procedure Code (Act XIV of 1882), s. 523.*—If, after a reference to arbitration, it transpires that the arbitrator has been acting as am-muktear of one of the parties, without any remuneration, the other party is entitled to withdraw from the reference, and the award made by the arbitrator after receipt of notice of revocation cannot be enforced by suit. If the arbitrator is indebted to one of the parties at the time of the reference, or becomes so indebted after the reference, and in either case does not disclose the fact to the other party, such party would be entitled to revoke the reference upon discovery of the fact, and any award made by such arbitrator would be invalid on the ground of judicial misconduct. *O. R. Coley* v. *A. DaCosta (1890), I. L. R., 17 Calc., 200*, *Toolsimoni Dassi* v. *Sudevi Dasi (1899), 3 C. W. N., 361*; and *Kali Prosanno*

ARBITRATION—*continued*

5 AWARDS—*continued.*

(c) Validity of Awards, and Ground for setting them aside—*concluded*

Ghose v. Rajani Kanto Chatterjee (1897), I. L. R., 25 Calc., 141, referred to. Mahomed Wahiuddin v Hakiman (1902)

[I. L. R., 29 Calc., 278; s.c., 6 C. W. N., 235

18.————— *Application to the Presidency Small Cause Court to set aside an award—Small Cause Court, jurisdiction of—Civil Procedure Code (Act XIV of 1882), ss. 521 and 622.*—The Presidency Small Cause Court has jurisdiction to entertain an application under s. 521 of the Civil Procedure Code, and the High Court cannot interfere (under s 622 of the Code) merely because such Court has taken, in the exercise of its jurisdiction, a mistaken view as to what does or does not constitute misconduct. Misconduct, in s. 521 of the Code, does not of necessity imply corruption. The [illegible]

Sarat Chunder Chowdhry (1903)

[I. L. R., 30 Calc., 397; s.c., 7 C. W. N., 545

19.—**Reference to District Munsif—** [illegible]

and agreeing to abide by the decision which the Court might be pleased to pass, as the final decision. The District Munsif passed an order in terms of the petition, and inspected the site, and considered the documents, and ultimately passed a decree in plaintiff's favour. Against that decree, defendant appealed. *Held* that the District Munsif had acted as an arbitrator by consent of the parties, and no appeal lay from his decision, which must be looked upon as an award. And, as no reasons had been shown for setting aside the award under s 521 of the Code, the decree must be taken to have been passed in accordance with the award, and, as such, upheld. Nidhamarthi Mukkanti v. Thammana Ramayya (1902) . . I. L. R., 26 Mad., 76

(d) Delay in making Award.

20. [illegible]

and the husband of defendant 4 were appointed arbitrators. The plaintiff brought the present suit against the arbitrators and defendant 5, to recover damages, alleging that only an oral award had been given and that in collusion with defendant 5 the

ARBITRATION—*concluded.*

5 AWARDS—*concluded.*

(d) Delay in making Award—*concluded.*

arbitrators had failed to give a written award, and that, not having obtained a written award, he had suffered loss by reason of the bonds having "gone out of time" (become barred by limitation). The lower Court held that, inasmuch as the arbitrators had not shown that their delay in giving an award was caused by the negligence of the parties, the presumption was that they acted fraudulently in not doing their duty. It therefore awarded the plaintiff R1,000 damages against defendants 1 to 4. On appeal: *Held* (1) (reversing the decree and dismissing the suit) that, if (as stated in the plaint) an oral award had been made, there was no cause of action, as there was no stipulation that the award should be in writing; (2) that the fraud alleged, *viz*, of collusion with the fifth defendant, was negatived by the evidence, which showed that the arbitrators were not unanimous; (3) that the fact that the arbitrators had failed to account for the delay in [illegible] resumption [illegible] o presume [illegible] there was [illegible] avlappa v.

[I. L. R., 26 Bom., 132

6. PRIVATE ARBITRATION.

21. [illegible] *Civil Procedure Code (Act XIV of 1882),* [illegible] *d—Award* [illegible] *luding im-* [illegible] *isdiction—Jurisdiction to file award and pass decree.*—Matters in dispute between certain parties were submitted to arbitration within the jurisdiction of the High Court, and an award was in due course made therein. The matter to which the award related was the partition of property, including immovable property, part of which was situated outside the jurisdiction of the High Court. Application was then made that the award might be filed [illegible]

[I. L. R., 24 Mad., 31

ARBITRATION ACT, 1899.

——s. 13—

See Arbitration—Awards—Construction and Effect of.

[I. L. R., 29 Calc., 793

ARBITRATOR.

See Arbitration.

ARMS ACT (XI OF 1878).

——s. 19—

—"*Going armed*"—*The mere carrying of arms, for purposes other than their use as such, not an offence.*—One *C. N.*, a person entitled to possess and use fire-arms, gave a pistol to an acquaintance, who was not entitled to possess and use fire-arms, asking him to take it and get it repaired in a neighbouring town This acquaintance gave the pistol to his father, Harpal Rai, who was taking it into the town to get it repaired, when he was arrested and charged with an offence under s 19 of the Indian Arms Act, 1878. *Held* that Harpal Rai was, under the circumstances, guilty of no offence under the Arms Act. The mere temporary possession, without a license, of arms, for purposes other than their use as such, is not an offence within the meaning of s. 19 of the Arms Act. *Queen-Empress* v *Alexander William, Weekly Notes, 1891, p 208, Queen-Empress* [illegible] *Queen-E*[illegible] *p. 62*, ref [illegible]

ARMY ACT, 1881 (44 & 45 VICT., C. 58).

—— ss. 136, 151—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY.
[I. L. R., 25 Mad., 402

ARMY (ANNUAL) ACT, 1895 (58 VICT, C. 7).

——s. 4—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY.
[I. L. R., 25 Mad., 402

ARREARS OF RENT.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.
[7 C. W. N., 203

See SALE FOR ARREARS OF RENT.

ARREARS OF REVENUE.

See SALE FOR ARREARS OF REVENUE.

ARREST.

	Col.
1. CIVIL ARREST . . .	76
2. CRIMINAL ARREST . . .	"

See WARRANT OF ARREST.

——criminal arrest—

See POLICE ACT (V OF 1861), ss. 17, 19.
[I. L. R., 28 Calc., 411

See WARRANT OF ARREST—CRIMINAL CASES I. L. R., 28 Calc., 399

ARREST—*concluded.*

——of ship—

See ADMIRALTY OR VICE-ADMIRALTY JURISDICTION.
[I. L. R., 29 Calc., 402

——validity or otherwise of—

See ESCAPE FROM CUSTODY.
[I. L. R., 28 Calc., 253;
6 C. W. N., 337

1. CIVIL ARREST.

—*Decree—Execution—Arrest of debtor in execution—Release of debtor from such arrest under interim protection order granted under s. 13 of Indian Insolvent Act (11 & 12 Vict., c 21)—Re-arrest of debtor in execution of same decree—Civil Procedure Code (XIV of 1882), s. 341.*—A judgment-debtor who has been arrested and imprisoned in execution of a decree, and has obtained an *interim* protection order under s. 13 of the Indian Insolvent Act (11 & 12 [illegible]

(1902) . . . I. L. R., 26 Bom., 652.

2 CRIMINAL ARREST.

—*Madras Abkari Act (Mad. Act I of 1886), s. 34—Power of officer in one Circle to arrest offenders in another.*—An officer of the Salt and [illegible]

whether the officer who effected the arrest was acting [illegible]

ASCETIC.

—— succession to property of—

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS . 7 C. W. N., 145.

See LETTERS OF ADMINISTRATION.
[I. L. R., 28 Calc., 608.

ASSAULT.

See M JOINDER. [I. L. R., 26 Bom., 259

— suit for damages for—

See DAMAGES—SUITS FOR DAMAGES—TORT . . 6 C. W. N., 915

ASSAULT ON PUBLIC SERVANT.

See POLICE ACT (V OF 1861), ss 17, 19 [I. L. R., 28 Calc., 411

See THUMB IMPRESSIONS [I. L. R., 30 Calc., 97

See WARRANT OF ARREST - CIVIL CASES [5 C. W. N., 843

—*Penal Code (Act XLV of 1860), ss 352, 353—Assaulting a public officer in the discharge of his duties—Assault on a witness—Charge for the offence under s 353—Conviction for assaulting a witness, when no complaint of such offence.*—A person called upon to meet a charge that he had assaulted a public officer in the discharge of his duties

ASSESSORS.

1.—Absence of assessor—*Criminal Procedure Code (Act V of 1898), ss. 284, 285 and 537—Trial with assessors—Trial with the aid of one assessor only—Legality of such trial.*—In a case triable by a Court of Session with the aid of assessors, one of the assessors being ill, the trial commenced and ended with only one assessor. *Held* that there was no legal trial, and that the proceedings must be set aside and a new trial directed. S. 537 of the Criminal Procedure Code (Act V of 1898) had no application to such a case, as the Court was not properly constituted. KING-EMPEROR *v* JAYRAM (1901) . . . I. L. R., 25 Bom., 694

2. ——————*Criminal Procedure Code (Act V of 1898), ss. 285, 537—Commencement of trial, for murder, by Judge and two assessors—Absence of one assessor during portion of the trial—*

was permitted to absent himself during two whole days and five half days, respectively; at first, so that he might visit his mother on her death-bed, and subsequently, to perform the daily obsequies rendered necessary by her decease. He then resumed his seat as an assessor, and continued so to act until the termination of the trial, all the depositions recorded in his absence having been read by him on his return. At the conclusion of the trial the Sessions Judge invited the opinion of each assessor, and

ASSESSORS—*concluded.*

recorded it. The opinion of each was that all the accused were guilty; and the Judge, concurring in that opinion, convicted the accused. The prisoners

3. ——————*Criminal Procedure Code (Act V of 1898), ss 268, 285—Assessor, trial with the aid of—Assessor, absence of, from trial.*—The law requires that a Sessions trial should under exceptional circumstances be held by the Sessions Judge with the aid of at least one and the same assessor sitting

4.—Jurors as assessors—*Criminal Procedure Code (Act V of 1898), ss. 269 (3), 309—Sessions Judge sitting with jury—Charges of theft and administering drug—Opinion of only two jurors taken as assessors on second charge—Validity.*—At the trial of an accused, before a Sessions Judge and a jury, for theft in a building (an offence triable by a jury), and for administering a noxious substance (an offence triable by assessors), the Judge took the verdict of the jury on the former charge, and took

the latter charge, and that his failure to do so was not an "omission" or "irregularity" to which s 537 applied. RAMAKRISHNA REDDI *v.* EMPEROR (1903) . . . I. L. R., 26 Mad., 598

ASSETS.

See REPRESENTATIVE OF DECEASED PERSON . I. L. R., 26 Mad., 792

ASSIGNMENT.

See DEBTOR AND CREDITOR. [I. L. R., 26 Bom., 577

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY. [I. L. R., 26 Mad., 540

ASSIGNMENT—*concluded.*

See LIMITATION ACT, 1877, s. 7, AND SCH. II, ART. 11.
[I. L. R., 26 Bom., 730

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES
[I. L. R., 24 Mad., 654

——by debtor—

See INSOLVENT ACT—
s. 9 ; I. L. R., 26 Bom., 476
ss 9 AND 24.
[I. L. R., 26 Bom., 765

——of debt—

See INSOLVENT ACT, s 23
[I. L. R., 25 Mad., 406

——of decree—

See BENGAL TENANCY ACT, s 148, CL (*h*)
[6 C. W. N., 91

ASSIGNMENT OF CHOSE IN ACTION.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

See LIS PENDENS . I. L. R., 23 All., 331

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES
[I. L. R., 24 Mad., 654

1.—*Letters Patent, Art. 15—Refusal to order assignee of plaintiff to be brought on record—Appeal—Civil Procedure Code (Act XIV of 1882), s 372—Application to be brought on record in* [illegible]

[illegible]

undetermined. The case was set down for hearing in order that a decree might be passed in terms [illegible]

[illegible]

complied with, as *A* was directly interested in the matters to be settled by the decree. COMMERCIAL BANK OF INDIA *v.* SABJU SAHEB (1900)
[I. L. R., 24 Mad., 252

2.—*Civil Procedure Code (Act XIV of 1882), s. 244—Suit by assignee of decree for declaration of validity of assignment—Maintainability.*—A suit lies, at the instance of the assignee of a decree, for a declaration as to the validity of his assig[illegible] of Act [illegible] *Raman* [illegible] 478, ref [illegible] TAKUNTA SRINIVASA RAU (1902)
[I. L. R., 26 Mad., 264

ATTACHMENT.

See ABSCONDING OFFENDER.
[I. L. R., 29 Calc., 417

See ACQUIESCENCE . 7 C. W. N., 170

See CLAIM TO ATTACHED PROPERTY.

See CRIMINAL PROCEDURE CODE, s. 146.
[I. L. R., 29 Calc., 382

See DECLARATORY DECREE, SUIT FOR—REMOVING ATTACHMENT.
[I. L. R., 25 All., 347

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE
[6 C. W. N., 577
I. L. R., 25 Mad., 406
„ 26 Mad., 673

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—ATTACHMENT OF PROPERTY.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ATTACHMENT.
[I. L. R., 26 Mad., 504

See WARRANT OF ATTACHMENT.
[I. L. R., 29 Calc., 244

——alienation during attachment—

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUIT . I. L. R., 28 Calc., 492

ATTACHMENT—*continued*

——attachment before judgment—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS. [I. L. R., 29 Calc., 773

——claim to attached property—

See BENGAL TENANCY ACT, s. 170. [I. L. R., 28 Calc., 382

——irregularities in—

See WARRANT OF EXECUTION. [5 C. W. N., 391

——liability for wrongful attachment—

See MESNE PROFITS—ASSIGNMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS I. L. R., 25 Calc., 540

——of property—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—ATTACHMENT OF PROPERTY . . 6 C. W. N., 882

1. SUBJECTS OF ATTACHMENT.

(a) ANNUITY OR PENSION.

1.—Annuity to vendor—*Civil Procedure Code, s. 266—Execution of decree—Annuity payable to vendor by vendee of immovable property.*—*Held* that, where a person made over property to the Court of Wards, partly in consideration of a present payment, and partly in consideration of an annuity payable to the vendor, such annuity was property of the vendor which was capable of being attached in execution of a decree against the vendor *Haridas Acharjia* v. *Baroda Kishore*

2.—Political pension—*Civil Procedure Code (Act XIV of 1882), s. 266 (g)—Fund representing political pension due at date of pensioner's death, but unpaid—Liability to attachment*—A person to whom a political pension was being paid died; and at the date of his decease a sum of money

3. ———————— *Civil Procedure Code (Act XIV of 1882), s. 266 (g)—Pensions Act (XXIII of 1871), s. 11—Attachment of pension*

ATTACHMENT—*continued*.

1 SUBJECTS OF ATTACHMENT—*continued*.

(a) ANNUITY OR PENSION—*concluded*.

payable to descendants of reigning family in Ceylon—Pensions payable in British India—

pensions Apparently, though this was not proved, the cost of these pensions was ultimately defrayed by the Government of Ceylon These pensions were attached in execution of certain decrees Upon application being made by the pensioners to have the

were to be regarded as merely the agent of the Ceylon Government for the purpose of paying the pensions, the Courts of British India would have no jurisdic-

(b) DEBTS

4.—Money payable to auctioneer—*Civil Procedure Code, s. 266—Execution of decree—Attachment of money payable to an auctioneer by*

HABAD BANK (1901) . I. L. R., 23 All., 135

5.—Mortgage-debt—*Mortgage—Mortgage-debt, nature of—Movable or immovable property—Mode of attaching and selling a mortgage-debt in execution—Civil Procedure Code (Act XIV of 1882), ss 268, 274—Effect of sale of mortgage-debt in execution.*—A mortgage-debt is movable

[I. L. R., 26 Bom., 305

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(c) DECREES.

6.—Money-decree—*Civil Procedure Code (Act XIV of 1882), s. 273—Decree for dissolution of partnership—Money decree—Execution of money-decree—Attachment of decree for dissolution of partnership.*—Certain creditors of a partnership obtained a money-decree against the firm. In execution of their decree they sought to attach and sell a decree for the dissolution of the firm and for the taking of the accounts of the partners and for the incidental reliefs requisite in such decrees, including the appointment of a receiver and a direction to pay the debts of the firm *Held* that the decree for dissolution could so far be regarded as a money-decree, and could therefore be attached, but not sold. The proper remedy in such cases is by proceedings under s. 273 of the Civil Procedure Code. SIDLINGAPPA BIN IRAPPA *v* SHANKARAPPA BIN KARIBASAPPA (1903) . I. L. R., 27 Bom., 556

7.————— *Civil Procedure Code, s 23*—A decree upon a mortgage is not a money-decree within the provisions of s 273, Civil Procedure Code *E. R. Macnaghten v Surja Prasad Missra (1899), 4 C. W. N, xxxc,* followed BAIJ NATH LOHEA *v* BINOYENDRA NATH PALIT (1901) [6 C. W. N., 5

(d) EXPECTANCY.

8.—Future rents and profits of ghatwal—*Decree, attachment in execution of—Ghatwali estate—Attachment of future rents and profits—Prohibitory order—Receiver.*—Future rents and profits that may become due to a ghatwal cannot, as such, be attached in execution of a decree against him. *Haridas Acharjia Chowdhry v. Baroda Kishore Acharjia Choudhry (1899), I. L. R., 27 Calc., 39,* followed. UDOY KUMARI GHATWALIN *v.* HARI RAM SHAHA (1901) . I. L. R., 28 Calc., 483

(e) JOINT FAMILY AND REVERSIONARY INTERESTS.

9.—The effect of s. 30 of the Insolvent Debtors' Act and the analogous provision contained in s. 266 of the Code of Civil Procedure considered. NUNNA BRAHMAYYA SETTI *v* CHAIDABABOYINA VENKITASWAMY (1902) . I. L. R., 26 Mad., 214

(f) MESNE PROFITS.

10.—*Civil Procedure Code (Act XIV of 1882), ss. 235, 273, 583—Execution—Decree for money—Attachment of a right to recover mesne profits by way of res[illegible]*
pelled by [illegible]
up possessi[illegible]
Court reversed the decree under which he had been dispossessed, and declared him to be entitled to recover possession, with mesne profits The holder of another decree against the same judgment-debtor attached, in execution of his decree, the judgment-debtor's right to recover the mesne profits. The decree-holder then applied under s. 273 of the Code

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(f) MESNE PROFITS—*concluded.*

of Civil Procedure to recover the mesne profits by way of execution. *Held* that he was not entitled to do so. The right of the judgment-debtor to recover the mesne profits by way of restitution was not a decree for money within the meaning of s. 273 of the Code of Civil Procedure. Such a right might be enforced by suit or by summary process in execution under [illegible]
not a [illegible]
applies [illegible]
is one expressly settled by the decree. *Semble* that, if [illegible]

NARAYANA PATTAR (1900) [I. L. R., 24 Mad., 341

(g) OFFERINGS TO HINDU DEITY.

11.—*Civil Procedure Code (Act XIV of 1882), s 266—"Saleable property"—Right to receive offerings to an idol—"Disposing power" over such offerings—Decree, execution of.*—Offerings which may in future be made to a Hindu idol cannot be [illegible]

s c. (ISVAR BOIDYANATH JEO *v.* PEARY CHURN DEY) . . . . 6 C. W. N., 728

(h) SALARY.

12.—Military officer—*Army Act (44 & 45 Vict., cap. 58), ss. 136, 151—Army (Annual) Act, 1895 (58 Vict., cap. 7), s. 4—Civil Procedure Code (Act XIV of 1882), ss. 2, 266—"Public officer"* [illegible]

LLOYD (1901) . . I. L. R., 25 Mad., 402

13.—Railway servant—*Execution of decree—Attachment of salary—Prohibitory order—Railway servants, salaries of—Civil Procedure Code (Act XIV of 1882), ss. 268, 617—Small Cause Court, jurisdiction of—Disbursing office outside the jurisdiction of the Court—Transfer of* [illegible]

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*concluded.*

(h) SALARY—*concluded.*

(i) TRUST PROPERTY.

14.—*Civil Procedure Code (Act XIV of 1882), s. 622—Decree, execution of—Attachment of trust property—Jurisdiction—Small Cause Court—Notice—Procedure, irregularity of*—Under a decree of the Presidency Small Cause Court (the decree being a personal one against the judgment-debtor), trust property, of which the judgment-debtor was the trustee, was attached in execution, the beneficiaries under the trust not being parties to the proceedings. *Held* that the attachment of the trust

that the mere fact that the trustee, in carrying on the business of a trust, had rendered himself personally liable for the business-debts, would not of itself give creditors a right to proceed against the trust property; but the creditors would be at

Code of Civil Procedure. IN THE MATTER OF M. A. SHARD (1901) . I. L. R., 28 Calc., 574

2. ATTACHMENT BEFORE JUDGMENT.

15.—*Civil Procedure Code (Act XIV of 1882), ss. 491, 588—Attachment before judgment—Compensation—Appeal*—There is no appeal from an order awarding compensation under s 421 of the Code of Civil Procedure NARASINGA BHAKSHI *v.* GOVINDA BHAKSHI (1900) I. L. R., 24 Mad., 62.

ATTACHMENT—*concluded.*

2. ATTACHMENT BEFORE JUDGMENT—*concluded.*

16.—*Civil Procedure Code (Act XIV of 1882), ss 483 and 648—Property outside jurisdiction.*—Case in which an order made attaching before judgment property outside the jurisdiction RAM PERTAB JHOWAR *v.* MADHO RAI (1902)

[7 C. W. N., 216

3 ALIENATION DURING ATTACHMENT.

17.—Two attachments—*Civil Procedure Code, s. 276—Mortgage alleged to have been made pending an attachment—Attachment when to be considered as raised—Execution of decree*—Where a party prosecuting a decree is compelled to take out another execution, his title should be presumed to date from the second attachment *Puddomonee Dossee* v *Mathoora Nath Choudhry (1873), 12 B. L. R, 411,* and *Hafiz Suleman* v *Sheikh Abdullah (1894), I. L. R., 16 All., 133,* referred to. KISHEN LAL *v* CHARAT SINGH (1900) . . I. L. R., 23 All., 114

18.—Mahomedan law — *Will — Testator — Bequest to stranger of more than one-third of testator's property—Consent of heirs—Alienation—Civil Procedure Code (Act XIV of 1882), s. 276.*—Where a Mahomedan, by his will, bequeaths more than one-third of his whole property to a stranger, the consent of his heirs to such bequest,

execution of a decree against the testator's heirs, is good, and does not amount to an alienation such as is prohibited by s 276 of the Civil Procedure Code (Act XIV of 1882) DAULATRAM KHUSHALCHAND *v.* ABDUL KAYUM NABUDIN (1902)

[I. L. R., 26 Bom., 497

ATTEMPT TO COMMIT OFFENCE.

See FORGERY I. L. R., 25 Mad., 726

See PENAL CODE, s 422

[I. L. R., 28 Calc., 314

1.—Dacoity—*Act XLV of 1860 (Indian Penal Code), ss. 397, 511—Attempt to commit dacoity—Use of arms in endeavouring to effect escape—Conviction, under what sections to be recorded*—Where several persons were found en-

(1867), 7 W. R, Cr. R, p. 48, referred to QUEEN-EMPRESS *v.* BENI (1900) . I. L. R., 23 All., 78.

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(c) DECREES.

6.—Money-decree—*Civil Procedure Code (Act XIV of 1882), s. 273—Decree for dissolution of partnership—Money decree—Execution of money-decree—Attachment of decree for dissolution of partnership.*—Certain creditors of a partnership obtained a money-decree against the firm. In execution of their decree they sought to attach and sell a decree for the dissolution of the firm and for the

sold. The proper remedy in such cases is by proceedings under s. 273 of the Civil Procedure Code SIDLINGAPPA BIN IRAPPA *v* SHANKARAPPA BIN KARIBASAPPA (1903) . **I. L. R., 27 Bom., 556**

7.—————— *Civil Procedure Code, s. 23*—A decree upon a mortgage is not a money-

[6 C. W. N., 5

(d) EXPECTANCY

8.—Future rents and profits of ghatwal—*Decree, attachment in execution of—Ghatwali estate—Attachment of future rents and profits—Prohibitory order—Receiver*—Future rents and

(e) JOINT FAMILY AND REVERSIONARY INTERESTS.

9.—The effect of s. 30 of the Insolvent Debtors' Act and the a
of the Code
BRAHMAYYA
SWAMY (1902

(f) MESNE PROFITS.

10—*Civil Procedure Code (Act XIV of 1882), ss. 235, 273, 583—Execution—Decree for money—*

decree-holder then applied under s. 273 of the Code

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(f) MESNE PROFITS—*concluded.*

of Civil Procedure to recover the mesne profits by way of execution. *Held* that he was not entitled to do so. The right of the judgment-debtor to recover the mesne profits by way of restitution was not a decree for money within the meaning of s. 273 of the Code of Civil Procedure. Such a right might be enforced by suit or by summary process in execution under
not a d
applies
is one e
a
h
m
m
NARAYANA PATTAR (1900)
[I. L. R., 24 Mad., 341

(g) OFFERINGS TO HINDU DEITY.

11

s c. (ISVAR BOIDYANATH JEO *v* PEARY CHURN DEY) . . . . . **6 C. W. N., 728**

(h) SALARY.

12.—Military officer—*Army Act (44 & 45 Vict., cap. 58), ss 136, 151—Army (Annual) Act,*

St
18
18
moiety of t
Corps, unde
Procedure
I. L. R.,
LLOYD (1901) . . **I. L. R., 25 Mad., 402**

13—**Railway servant**—*Execution of decree—Attachment of salary—Prohibitory order—Railway servants, salaries of—Civil Procedure Code (Act XIV of 1882), ss. 268, 617—Small Cause Court, jurisdiction of—Disbursing office outside the jurisdiction of the Court—Transfer of*

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*concluded.*

(h) SALARY—*concluded.*

for execution to the Court within the local limits of which the disbursing office is situate. A disbursing officer who has so far submitted to such a prohibitory order as to recover and keep in deposit with him the

(i) TRUST PROPERTY.

14.—*Civil Procedure Code (Act XIV of 1882), s. 622—Decree, execution of—Attachment of trust property—Jurisdiction—Small Cause Court—Notice—Procedure, irregularity of*—Under a decree of the Presidency Small Cause Court (the decree being a personal one against the judgment-debtor), trust property, of which the judgment-debtor was the trustee, was attached in execution, the beneficiaries under the trust not being parties to the proceedings. *Held* that the attachment of the trust property was irregular and improper; and that the

business of an hotel; (ii) that the circumstances

2. ATTACHMENT BEFORE JUDGMENT.

15.—*Civil Procedure Code (Act XIV of 1882), ss. 491, 588—Attachment before judgment—Compensation—Appeal.*—There is no appeal from an

ATTACHMENT—*concluded.*

2. ATTACHMENT BEFORE JUDGMENT—*concluded.*

order awarding compensation under s. 491 of the Code of Civil Procedure. NARASINGA BHAKSHI *v.* GOVINDA BHAKSHI (1900) **I. L. R., 24 Mad., 62.**

16.—*Civil Procedure Code (Act XIV of 1882),*

[7 C. W. N., 216.

3. ALIENATION DURING ATTACHMENT.

17.—

Code,

made

when

decree—Where a party prosecuting a decree is compelled to take out another execution, his title should be presumed to date from the second attachment *Puddomonee Dossee* v. *Mathoora Nath Choudhry (1873), 12 B. L. R., 411,* and *Hafiz Suleman* v. *Sheikh Abdullah (1894), I. L. R., 16 All., 133,* referred to KISHEN LAL *v.* CHARAT SINGH (1900) . . **I. L. R., 23 All., 114**

18.—**Mahomedan law**—*Will—Testator—Bequest to stranger of more than one-third of testator's property—Consent of heirs—Alienation—Civil Procedure Code (Act XIV of 1882), s. 276.*—Where a Mahomedan, by his will, bequeaths more than one-third of his whole property to a stranger, the consent of his heirs to such bequest,

execution of a decree against the testator's heirs, is good, and does not amount to an alienation such as is prohibited by s. 276 of the Civil Procedure Code (Act XIV of 1882) DAULATRAM KHUSHALCHAND *v.* ABDUL KAYUM NABUDIN (1902)

[I. L. R., 26 Bom., 497

ATTEMPT TO COMMIT OFFENCE.

See FORGERY **I. L. R., 25 Mad., 726**

See PENAL CODE, s 422

[I. L. R., 28 Calc., 314

1.—**Dacoity**—*Act XLV of 1860 (Indian Penal Code), ss. 397, 511—Attempt to commit dacoity—Use of arms in endeavouring to effect escape—Conviction, under what sections to be recorded.*—Where several persons were found endeavouring to break into a house, and some of them, being armed, used violence, but only in attempting

could

with

ll., 78.

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(c) DECREES.

6.—**Money-decree**—*Civil Procedure Code (Act XIV of 1882), s. 273—Decree for dissolution of partnership—Money decree—Execution of money-decree—Attachment of decree for dissolution of partnership*—Certain creditors of a partnership [illegible]

[illegible]

dissolution could so far be regarded as a money-decree, and could therefore be attached, but not sold. The proper remedy in such cases is by proceedings under s 273 of the Civil Procedure Code. SIDLINGAPPA BIN IRAPPA v SHANKARAPPA BIN KARIBASAPPA (1903) . **I. L. R., 27 Bom., 556**

7.——————— *Civil Procedure Code, s. 23.*—A decree upon a mortgage is not a money- [illegible]

[illegible]

(d) EXPECTANCY.

8.—**Future rents and profits of ghatwal**—*Decree, attachment in execution of—Ghatwali estate—Attachment of future rents and profits—Prohibitory order—Receiver.*—Future rents and profits that may become due to a ghatwal cannot, as such, be attached in execution of a decree against him. *Haridas Acharjia Chowdhry* v. *Baroda Kishore Acharjia Chowdhry (1899), I. L. R., 27 Calc., 38,* followed. UDOY KUMARI GHATWALIN v. HARI RAM SHAHA (1901) . **I. L. R., 28 Calc., 483**

(e) JOINT FAMILY AND REVERSIONARY INTERESTS.

9.—The effect of s. 30 of the Insolvent Debtors' Act and the analogous provision contained in s. 266 of the Code of Civil Procedure considered. NUNNA BRAHMAYYA SETTI v. CHAIDARABOYINA VENKITASWAMY (1902) . . **I. L. R., 26 Mad., 214**

(f) MESNE PROFITS.

10.—*Civil Procedure Code (Act XIV of 1882), ss. 235, 273, 583—Execution—Decree for money—Attachment of a right to recover mesne profits by way of restitution.*—A judgment-debtor was compelled by a decree obtained against him to deliver up possession of certain land. On appeal, the High Court reversed the decree under which he had been dispossessed, and declared him to be entitled to recover possession, with mesne profits The holder of another decree against the same judgment-debtor attached, in execution of his decree, the judgment-debtor's right to recover the mesne profits. The decree-holder then applied under s. 273 of the Code

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(f) MESNE PROFITS—*concluded.*

of Civil Procedure to recover the mesne profits by way of execution. *Held* that he was not entitled to do so. The right of the judgment-debtor to recover the mesne profits by way of restitution was not a decree for money within the meaning of s. 273 of [illegible]

[illegible]

NARAYANA PATTAR (1900)
I. L. R., 24 Mad., 341

(g) OFFERINGS TO HINDU DEITY.

11.—*Civil Procedure Code (Act XIV of 1882), s 266—"Saleable property"—Right to receive offerings to an idol—"Disposing power" over such offerings—Decree, execution of.*—Offerings which may in future be made to a Hindu idol cannot be attached in execution of a decree against the idol, the right to receive such offerings not being "saleable property" within the meaning of s. 266 of the Civil Procedure Code SHOILOJANUND OJHA v. PEARY CHARAN DEY (1902) . **I. L. R., 29 Calc., 470;** s c. (ISVAR BOIDYANATH JEO v. PEARY CHURN DEY) . . . . . **6 C. W. N., 728**

(h) SALARY.

12.—**Military officer**—*Army Act (44 & 45 Vict., cap. 58), ss. 136, 151—Army (Annual) Act, 1895 (58 Vict., cap 7), s. 4—Civil Procedure Code (Act XIV of 1882), ss. 2, 266—"Public officer"* [illegible]

[illegible]

Procedure *Calcutta Trades Association* v. *Rylands, I. L. R., 24 Calc., 102,* followed. WATSON v. LLOYD (1901) . . **I. L. R., 25 Mad., 402**

13.—**Railway servant**—*Execution of decree—Attachment of salary—Prohibitory order—Railway servants, salaries of—Civil Procedure Code (Act XIV of 1882), ss. 268, 617—Small Cause Court, jurisdiction of—Disbursing office outside the jurisdiction of the Court—Transfer of decree for execution*—A Small Cause Court has no authority to attach the salary of a railway servant [illegible]

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*concluded.*

(*h*) SALARY—*concluded.*

for execution to the Court within the local limits of which the disbursing office is situate. A disbursing officer who has so far submitted to such a prohibitory order as to recover and keep in deposit with him the

108, explained. ABDUL GAFUR *v* ALBYN (1903)
[I. L. R., 30 Calc., 713; s.c., 7 C. W. N., 821

(*i*) TRUST PROPERTY.

14.—*Civil Procedure Code (Act XIV of 1882), s. 622—Decree, execution of—Attachment of trust property—Jurisdiction—Small Cause Court —Notice—Procedure, irregularity of*—Under a decree of the Presidency Small Cause Court (the decree being a personal one against the judgment-debtor), trust property, of which the judgment-debtor was the trustee, was attached in execution, the

2. ATTACHMENT BEFORE JUDGMENT.

15.—*Civil Procedure Code (Act XIV of 1882), ss. 491, 588—Attachment before judgment—Compensation—Appeal.*—There is no appeal from an order awarding compensation under s. 421 of the Code of Civil Procedure NARASINGA BHAKSHI *v.* GOVINDA BHAKSHI (1900) I. L. R., 24 Mad., 62.

ATTACHMENT—*concluded.*

2. ATTACHMENT BEFORE JUDGMENT—*concluded.*

16.—*Civil Procedure Code (Act XIV of 1882), ss. 483 and 648—Property outside jurisdiction.*—Case in which an order made attaching before judgment property outside the jurisdiction. RAM PERTAB JHOWAR *v.* MADHO RAI (1902)
[7 C. W. N., 216

3. ALIENATION DURING ATTACHMENT.

17.—Two attachments—*Civil Procedure Code, s. 276—Mortgage alleged to have been made pending an attachment—Attachment when to be considered as raised—Execution of decree.*—Where a party prosecuting a decree is compelled to take out another execution, his title should be presumed to date from the second attachment. *Puddomonee Dossee* v. *Mathoora Nath Choudhry (1873), 12 B. L. R., 411*, and *Hafiz Suleman* v *Sheikh Abdullah (1894), I L. R., 16 All., 133*, referred to. KISHEN LAL *v.* CHARAT SINGH (1900) . . I. L. R., 23 All., 114

18.—Mahomedan law—*Will—Testator—Bequest to stranger of more than one-third of testator's property—Consent of heirs—Alienation —Civil Procedure Code (Act XIV of 1882), s. 276*—Where a Mahomedan, by his will, bequeaths more than one-third of his whole property to a stranger, the consent of his heirs to such bequest,

good, and does not amount to an alienation such as is prohibited by s 276 of the Civil Procedure Code (Act XIV of 1882). DAULATRAM KHUSHALCHAND *v* ABDUL KAYUM NASRUDIN (1902)
[I. L. R., 26 Bom., 497

ATTEMPT TO COMMIT OFFENCE.

See FORGERY I. L. R., 25 Mad., 726

See PENAL CODE, s 422.
[I. L. R., 28 Calc., 314

1.—Dacoity—*Act XLV of 1860 (Indian Penal Code), ss. 397, 511—Attempt to commit dacoity—Use of arms in endeavouring to effect escape—Conviction, under what sections to be recorded.*—Where several persons were found en-

s 511 of the Indian Penal Code *Queen* v. *Koonee (1867), 7 W. R., Cr. R., p. 49*, referred to. QUEEN-EMPRESS *v.* BENI (1900) . I. L. R., 23 All., 78.

ATTEMPT TO COMMIT OFFENCE —concluded.

2.—Forgery—*Act XLV of 1860 (Indian Penal Code), ss. 193, 511—Fabricating false evidence—Attempt to commit forgery.*—One Durga Charan Gir had an ejectment case against Ram Ghulam, which was decided against him. After this, on the 23rd of November, 1901, Durga Charan took his servant Daulat to the town of Padrauna, and there purchased an 8-anna stamp paper in the name of Ram Ghulam. Daulat personated Ram

facts, that Durga Charan was properly convicted of the offence of abetting the fabrication of false evidence, though his acts did not amount to an attempt to commit forgery. *Queen-Empress* v *Mula (1879), I. L. R., 2 All, 105,* followed. EMPEROR v. DURGACHARAN GIR (1902) I. L. R., 25 All., 75

ATTESTATION.

See DEED—EXECUTION [5 C. W. N., 454

See DEED—ATTESTATION.

——of mortgage—

See EVIDENCE ACT, s. 68. [6 C. W. N., 395

ATTORNEY.

See ATTORNEY AND CLIENT.

See LIMITATION ACT, 1877, SCH. II, ART. 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS . . I. L. R., 23 All., 499

——change of—

See ATTORNEY AND CLIENT. [I. L. R., 29 Calc., 63

See PRACTICE—CIVIL CASES—NEXT FRIEND . I. L. R., 28 Calc., 264

ATTORNEY AND CLIENT.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT . . 6 C. W. N., 306

1.—Duties of attorney—*Attorney, application for change of—Discharge by attorney himself—Lien on cause-papers—Duties of attorney on record—Costs—Refusal by attorney to act until costs incurred are paid—*

ATTORNEY AND CLIENT—continued.

costs are paid

ment. But wh

expressly or b

he must give u

whom the client proposes to go, only retaining his usual lien on such papers *Heslop* v. *Metcalfe (1837), 3 Myl. & Cr., 183; Robins* v. *Goldingham (1872), L. R., 13 Eq., 440; Wilson* v. *Emmet (1854), 19 Beav., 233,* relied upon. ATUL CHUNDER MOOKERJEE v. SOSHI BHUSAN MULLICK (1901) [I. L. R., 29 Calc., 63; s.c., 6 C. W. N., 215

2.—Managing clerk—*Agreement for remuneration—Agreement kept secret from client—Fiduciary relationship*—The plaintiff was managing clerk of a firm of Solicitors in Bombay, who were acting as Solicitors for one Cursondas in a suit which he (Cursondas) had filed in the High Court to

desired to obtain the assistance of the plaintiff in

that there was a fiduciary relationship existing between the plaintiff and Cursondas: the plaintiff

action was not known to Cursondas (and this is the view we hold), it was vitiated as against him, so far as Bhai Jivanji (the plaintiff) is concerned, by reason of the secrecy of the profit sought; if it was known to him, and he was a party to it, the transaction was incapable of supporting Bhai Jivanji's claim, in that it was unconscionable, without consideration, and unsustainable by reason of the fiduciary relation in which he stood to the donor and the absence of independent advice. It is true that Cursondas is not now before us resisting the claim;

ATTORNEY AND CLIENT—*concluded.*

which he could not have recovered from Cursondas directly. HARIVALAVHDAS HARIDAS *v.* BHAI JIVANJI (1902) . . I. L. R., 26 Bom., 689

3.—Remuneration—*Suit—Promissory note—Agreement by attorney to take a gross sum in lieu of costs—Client in Attorney's day book.—*

[illegible]

had competent and independent advice to measure the amount of service rendered by the attorney. *Tyrrell* v. *Bank of London (1862), 10 H. L. C., 26, 44; O'Brien* v. *Lewis (1862), 32 L. J., Ch., 569; Holman* v. *Loynes (1854), 4 De G. M. and G., 270; Rhodes* v. *Bate (1865), L. R., 1 Ch. A. C., 252, 257; Morgan* v. *Minett (1877), L. R., 6*

[illegible]

by acting partly as attorney and partly as agent of the same client. BROJENDRO NATH MULLICK *v.* LUCKHIMONI DASSEE (1902)
[I. L. R., 29 Calc., 595; s.c., 6 C. W. N., 616

AUCTIONEER.

—— attachment of money payable to—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS . I. L. R., 23 All., 135

AUCTION-PURCHASER.

See CIVIL PROCEDURE CODE, s. 244—
QUESTIONS IN EXECUTION OF DECREE;
PARTIES TO SUIT.

See SALE IN EXECUTION OF DECREE—ERRORS IN *DESCRIPTION OF PROPERTY* SOLD . . I. L. R., 29 Calc., 370

AWARD.

See APPEAL—ARBITRATION.

See ARBITRATION.

B

BAIL.

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 615

See RECOGNIZANCE TO APPEAR.
[I. L. R., 30 Calc., 107

—— cancellation of—

See ACCUSED PERSON . 5 C. W. N., 110

—— grant of, after Coroner's refusal—

See CORONER . . 7 C. W. N., 889

BAIL—*concluded.*

—— release on—

See FALSE IMPRISONMENT.
[I. L. R., 30 Calc., 872

—*Release on bail of a person convicted by Sessions Court of Madras pending appeal to Privy Council—Jurisdiction of High Court.*—A person was, at Criminal Sessions held in Madras, convicted of certain offences, and sentenced to imprisonment and fine. Upon a certificate being granted by the Advocate-General under s. 26 of the Letters

[illegible]

[I. L. R., 27 Mad., 101

BAILEES.

See RAILWAYS ACT (IX OF 1890), s. 72
[I. L. R., 30 Calc., 257

BALANCE OF ACCOUNT.

See LIMITATION ACT, 1877, SCH. II, ART. 64

BALCONY.

See BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT VI OF 1873), ss. 33 AND 42.
[I. L. R., 27 Bom., 221

BANIAN OF FIRM.

See LIEN . I. L. R., 30 Calc., 937

BANK OF BOMBAY.

See PRESIDENCY BANKS ACT (XI OF 1876), ss. 36, 37 . I. L. R., 25 Bom., 52

BANKER AND CUSTOMER.

—Entry in Pass book—*Cheque lodged by customer for collection—Effect of entry in customer's pass-book of such cheque as if collected—Estoppel.*—Early in March, 1900, the Hope Mills Company purchased 600 bales of cotton from the plaintiff at R278 per candy, but, being unable to accept and pay for them, it was arranged between

BANKER AND CUSTOMER—*continued.*

the Company and the plaintiffs that one Shridhan should take them over from the plaintiffs at R243-8-0 per candy (the price having fallen in the meantime), and that the Company should pay the plaintiffs the difference of price In fulfilment of this agreement, the Company sent to the plaintiffs a cheque for R9,500, drawn by them on the Commercial Bank, being approximately the amount of the difference. This cheque was given to the plaintiffs

after the delivery had proceeded thus far the plain-

the faith of its being an entry of cash actually received, and, further, the cheque was a post-dated cheque, and the plaintiffs when lodging it clearly had doubts as to whether it would be honoured or not, while the defendant Bank had no knowledge of any circumstance justifying doubts as to its payment.

BANKER AND CUSTOMER—*concluded.*

The parties thus did not deal on equal terms, and the defendant Bank was therefore not bound by the entry in the pass-book as a receipt. *Martin* v. *Morgan (1819), 1 Bro. and B.*, 289, referred to. MOWJI SHAMJI v. NATIONAL BANK OF INDIA (1900)
[I. L. R., 25 Bom., 499

BARRISTER.

—*Counsel and client—Suit by client to recover fees to Counsel—Cause of action—Status of a barrister practising as an advocate in the High Court for the North-Western Provinces—Civil Procedure Code, s. 622—Revision*—An English or Irish barrister who, in virtue of his call to the Bar, is enrolled as an advocate in the High Court of Judicature for the North-Western Provinces, and thereby is authorized to practise as an advocate in the said High Court and in the Courts subordinate thereto, is, in respect of fees paid to him by a client for professional service, in exactly the same position as if he were practising in England or Ireland, that is to say, the fees received by him for professional services are mere *honoraria*, and he can neither sue for the recovery of, nor be sued for the return of, such fees. *Kennedy* v *Brown (1862), 32 L. J, C. P, 134*, *Robertson* v *McDonough, 14 Cox., C. C, 469*; *Krishna Row* v *H F. Muttukistna (1869), 4 Mad. H C. Rep, 244*, *Smith* v *Gunneshee Lal (1871), N. W. P. H. C Rep, 1871, p. 83*; *Achamparambath Cheria Kunhammu* v *Guntz (1881), I. L. R., 3 Mad, 138*; *Reference under Stamp Act, s. 46 (1885), I. L. R, 9 Mad, 140*, *Stamp Reference (1893), I. L. R, 16 All., 132*; *Queen* v. *Doutre (1884), 9 A. C, 745*; and *In re LeBrasseur and Oakley, L. R, 1896, 2 Ch, 487*, referred to. A client who had paid a fee to a barrister for profes-

20 All., 78, referred to. ROSS ALSTON v. PITAMBER DAS (F. B. 1903) I. L. R., 25 All., 509

BEHAVIOUR.

See SECURITY FOR GOOD BEHAVIOUR.

BENAMIDAR.

See BENAMI TRANSACTION.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES [I. L. R., 29 Calc., 682

BENAMI TRANSACTION.

See MADRAS REVENUE RECOVERY ACT, ss. 38 AND 39 I. L. R., 25 Mad., 655

See SALE IN EXECUTION OF DECREE—INVALID SALES—FRAUD [5 C. W. N., 265

1. GENERAL CASES

1.—Bond—*Realization by benamidar of money due on a bond in his name—Payment of such money*

and where the ... partially carried into effect, the Court will not lend its aid to enable the transferor, who has thus defrauded his creditors, to get his property back from the transferee. *Goberdhan Singh* v. *Ritu Roy (1896), I. L. R., 23 Calc., 962; Kali Charan Pal* v. *Rasik Lal Pal (1896), I. L. R., 23 Calc., 962 (note); Banka Behary Dass* v. *Raj Kumar Das*

BENAMI TRANSACTION—*continued.*

1. GENERAL CASES—*concluded.*

(1899), I. L. R., 27 Calc., 231; Taylor v. *Bowers (1876), L. R., 1 Q. B. D., 291*, referred to. But where the ostensible transferee never had any exclusive possession of the property in question,

3.—Suit to recover possession of property.—A benamdar, as such, is not entitled to maintain a suit for recovery of possession of immovable property of which he is a mere benamdar. *Hari Gobind Adhikari* v. *Akhoy Kumar Mozumdar (1889), I. L. R., 16 Calc., 364*, affirmed *Bhola Pershad* v. *Ram Lal (1896), I. L. R., 24 Calc., 34*, and *Ravji Appaji Kulkarni* v. *Mahadev Bapuji Kulkarni*

2. CERTIFIED PURCHASERS.

CIVIL PROCEDURE CODE, 1882, s. 317.

4.—*Suit for establishment of title, against*

Procedure Code is no bar to the suit; and that the protection afforded by that section extends only to the certified purchaser and not to one who derives title from him. *Raj Chandra Chuckervarti* v. *Dina Nath Saha (1898), 3 C. W. N., 433; Dukhoda Sundari Dassi* v. *Sreemuntha Joaddar (1899), 3 C. W. N., 657; Theyyavelan* v. *Kochan (1897), I. L. R., 21 Mad., 7*, referred to. NOKORI DHUR v. SARUP CHUNDER DEY (1900) [5 C. W. N., 341

5.—*Execution of decree—Sale in execution—Suit against certified purchaser for recovery of part of the property purchased*.—Kishan Lal and Tokha Mal were joint mortgagees. After their death, Durga, the adopted son of Kishan Lal, and Todar, the son of Tokha Mal, brought a suit upon the mortgage, and obtained a decree for sale. After this decree had been obtained, it was settled, by a suit ending in a consent decree, that one Musammat Pano

BENAMI TRANSACTION—*concluded.*

2. CERTIFIED PURCHASERS—*concluded.*

Civil Procedure Code, 1882, s 317—*concluded.*

was entitled along with Durga to a certain portion of the property of Kishan Lal. Kishan Lal and Todar

6.—*Suit by beneficial purchaser against certified purchaser—Suit not taken out of the section by reason of the beneficial purchaser being in posses-*

certificate. He further alleged that the purchase-money had been paid by him, and that he had all

BENCH OF MAGISTRATES.

See Discharge of Accused.
[7 C. W. N., 527

See Witness—Criminal Cases—Statements of Witnesses.
[I. L. R., 29 Calc., 483

BENGAL ACT.

—— 1862—VIII—

See Zamindari Daks.
[I. L. R., 28 Calc., 293

—— 1866—IV—

See Calcutta Police act.

—— 1867—II—

Gambling.

BENGAL ACT—*continued.*

—— 1868—VII—

———— s. 2—

See Public Demands Recovery Act (Ben. Act VII of 1880).
[I. L. R., 29 Calc., 73

———— s. 8—

See Sale for Arrears of Revenue—Setting aside Sale—Irregularity.
[I. L. R., 30 Calc., 1
7 C. W. N., 377

—— 1869—VIII—

———— ss. 59, 60, 64—

See Sale for Arrears of Rent—Under-tenures, Sale of.
[I. L. R., 30 Calc., 550

—— 1876—III—

See Bengal Irrigation Act.

———— VII—

See Land Registration Act.

———— VIII—

See Estates Partition Act.

—— 1878—VII—

See Bengal Excise Act.

——1879—VIII—

See Resumption—Effect of Resumption—Effect on Patta.
[L. R., 30 I. A., 159

———— IX—

See Court of Wards Act.

——1880—VII—

See Public Demands Recovery Act, 1880.

———— IX—

See Bengal Cess Act.

——1882—II, ss. 76 (*a*), 79—

See Embankment.
[I. L. R., 30 Calc., 481

——1884—III—

See Bengal Municipal Act.

——1888—II—

See Calcutta Municipal Consolidation Act.

——1889—III—

See Bengal Private Fisheries Protection Act.

——1895—I—

See Public Demands Recovery Act, 1895.

——1899—III—

See Calcutta Municipal Act.

BENGAL, AGRA AND ASSAM CIVIL COURTS ACT (XII OF 1887).

See VALUATION OF SUIT—APPEALS. [6 C. W. N., 346

—s. 10—

See SUBORDINATE JUDGE, JURISDICTION OF . . I. L. R., 23 All., 455

—s. 11—

See TRANSFER OF CIVIL CASE—GENERAL CASES . I. L. R., 25 All., 183

—ss. 13, 17—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION. [5 C. W. N., 150

—s. 17—

See TRANSFER OF CIVIL CASE—GENERAL CASES . I. L. R., 25 All., 183

—s. 19—

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . I. L. R., 30 Calc., 453

—s. 21—

See JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION. [I. L. R., 25 All, 277

See VALUATION OF SUIT—SUITS—PARTITION . . I. L. R., 24 All., 381

—s. 37—

See HINDU LAW—HUSBAND AND WIFE [I. L. R., 28 Calc., 751

See MAHOMEDAN LAW—INHERITANCE. [I. L. R., 23 All., 20

BENGAL CESS ACT (BEN. ACT IX OF 1880)

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE. [I. L. R., 30 Calc., 794

—Income-tax—*Mela, profits of—Liability to pay road-cess tax—Board of Revenue, authority of, to frame rules under Ben. Act IX of 1880, s. 105.*—The profits of a *mela* cannot be regarded as income derived from agriculture, and are not exempt from income-tax under s. 5 of the Income-Tax Act (II of 1886). Land, the profits of which are subject to income-tax, should not be assessed with road-cess tax, except when such land is also used for agricultural purposes. S. III, B. rule 33 (p. 74, Cess [illegible]

BENGAL CESS ACT (BEN. ACT IX OF 1880)—*concluded.*

—s. 4—

———— *Cultivating raiyat.—Tenure-holder.*—A tenant holding land and paying as rent therefor a sum of money exceeding one hundred rupees per annum is, for the purposes of assessment under the Cess Act, a tenure-holder and not a cultivating raiyat. CASPERSZ *v.* KUMAR SINGH (1900) [5 C. W. N., 535

—ss. 34, 35, 36, 41—

———— *Publication of valuation roll—Liability to pay cess for rent-paying land.*—Liability to pay road-cess, so far as rent-paying lands are concerned, does not depend upon the publication of the valuation roll under s. 34 of the Cess Act. *Bhug-* [illegible]

—s. 95—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS. [I. L. R., 30 Calc., 1033

—s. 99—

———— *Arrears of cess—Cess whether a* [illegible]

—s. 106—

———— A rule made under s. 106 held to be *ultra vires.*

See BENGAL CESS ACT (BEN. ACT IX OF 1880) . I. L. R., 28 Calc., 637

BENGAL EMBANKMENT ACT (BEN. ACT II OF 1882).

—ss. 3, 77—

See EMBANKMENT . 5 C. W. N., 108

—ss. 6, 76 (?), 80—

See EMBANKMENT . 7 C. W. N., 286

—ss. 76 (a), 79—

See EMBANKMENT. [I. L. R., 30 Calc., 481

BENGAL EXCISE ACT (BEN. ACT VII OF 1878).

—s. 53—

———— *Ganja—Sale of, without license, by servant, in presence of master—Receipt of money*

BENGAL EXCISE ACT (BEN. ACT VII OF 1878)—*concluded.*

——s. 53—*concluded.*

by servant—Servant, liability of—Penal Code (Act XLV of 1860), ss. 34, 40 and 114.—Where both

(1902) . . . I. L. R., 29 Calc., 496

——s. 59—

———— *Excise—Commission by servant of licensed manufacturer or vendor of act in breach of conditions of license—Liability of servant.*—

ditions of the license of such manufacture or vendor not otherwise provided for in the Act. *The Empress v. Nuddiar Chand Shaw (1881), I. L. R., 6 Calc., 832,* and *In the matter of Nomullu Akond (1882), 11 C. L. R., 416,* approved. *Ishur Chunder Shaha (1873), 19 W. R., Cr., 34,* distinguished *Empress v. Baney Madhub Shaw (1881), I. L. R., 8 Calc., 207,* overruled IN THE MATTER OF KALU MAL KHETRI (F B 1902)

[I. L. R., 29 Calc., 606; s.c., 6 C. W. N., 674

BENGAL GENERAL CLAUSES ACT.

See GENERAL CLAUSES ACT (BENGAL ACT I OF 1899)

BENGAL IRRIGATION ACT (BEN. ACT III OF 1876).

——ss. 1 and 6—

—*Ben. Act III of 1876, ss. 1, 6, 7, 8—Commencement of—Notification—Collector—Notice.*—An order made by the Lieutenant-Governor of Bengal under s 1 of the Bengal Irrigation Act, 1876, was published in the Calcutta Gazette on the 28th December, 1881, extending that Act to the district of Burdwan, and

Act, the Lieutenant-Governor declared that the water of certain rivers and channels, including that of the river Banka in the district of Burdwan, would be applied by the Government for the purposes of the Eden Canal after the 1st April, 1882. *Held* that the notification purporting to be made under s. 6 of the Bengal Irrigation Act was of no legal effect, having

BENGAL IRRIGATION ACT (BEN. ACT III OF 1876)—*concluded.*

——ss. 1 and 6—*concluded.*

been published before the Act was extended to the district of Burdwan; that the acts of the officers of Government under that notification with regard to the river Banka were without any legal

their

they

RY OF

GOPAL ADHIKARY (1900) . . I. L. R., 28 Calc., 487

BENGAL MUNICIPAL ACT (BEN. ACT III OF 1884).

——ss. 175, 235, 236, 237, 238, 273—

———— *Building — Commencement of*

Held that the whole order was illegal. The case did not come under s 273 (1) of the Act, and there was no necessity for the accused to have obtained permission. EMPEROR v. MATHURA PRASAD (1902)

[I. L. R., 29 Calc., 491

——ss. 238, 273—

See ante, ss. 175, ETC.

———— *Sanction to build when not given within specified period—Right to build without sanction—Period of sanction, computation of*—

such cases is to be computed from the date when complete plans and specifications are submitted in such a form as to make consideration by the Municipal Commissioners possible. SEWNANDAN RAI KAYAB v. VICE-CHAIRMAN OF THE DARJEELING MUNICIPALITY (1900) . . 5 C. W. N., 42

——ss. 263, 273—

———— *Keeper of hackney carriage—Milkman—License.*—Where it was found that a person had 7 or 8 ponies and 4 cows and some sheep, and let out one carriage and a pair of ponies on

BENGAL MUNICIPAL ACT (BEN. ACT III OF 1884)—*concluded*

——ss. 263, 273—*concluded.*

monthly hire and kept the same in her stable, and also kept other ponies for sale and supplied milk to others from her cows *Held* that the facts found did not render her liable to punishment under s 273 (2) read with s 263 of the Bengal Municipal Act, 1884. FAIRWEATHER *v.* SURESH CHUNDER DUTT (1900) . . . . . 5 C. W. N., 331

——ss. 270, 271, 353—

[illegible]

obedience of—Proof necessary—Limitation—

[illegible]

tions under the Act, or under any by-law made in pursuance thereof, unless they are instituted within three months next after the commission of such offence or within three months of the date when such commission of the offence is brought to the knowledge of the Chairman The service of requisition on the accused who is charged with disobedience thereof, as well as the requisition itself, should be proved and found before there can be a conviction for an offence under s 271 of the Act BIDHU BHUSAN MULLICK *v.* ASSENSOLE MUNICIPALITY (1901) [6 C. W. N., 167

——s. 273—

See ante, ss 175, ETC; ss. 238 AND 273; 263 AND 273

——s. 353—

See ante, ss. 270, 271, 353.

BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT (XII OF 1887).

See BENGAL, AGRA AND ASSAM CIVIL COURTS ACT

BENGAL PRIVATE FISHERIES PROTECTION ACT (BEN. ACT II OF 1889).

——s. 3—

—Fishing in private waters—Bonâ fide claim of right—Jurisdiction of Criminal Court, ouster of—Fishing under a lease—Title of lessor, inquiry as to, if necessary—Explanation of Magistrate to supplement judgment, if proper.—A person who *bonâ fide* claims to exercise the right of fishing in private waters on the basis of a lease cannot be convicted of an offence under s 3 of Bengal Act II of 1889. The question as to whether or not the lessee is bound before taking the lease to satisfy himself thoroughly that his lessor has a good title to the waters leased, is one which does not properly come into consideration under Bengal Act II of 1889 In the absence of any finding in the judgment of a Magistrate, a finding in the explanation submitted by the Magistrate in showing cause against a rule *nisi* should not be considered and given effect to at the hearing of the rule IN THE MATTER OF NAZIR MALLIA *v.* HARI CHARAN PARUI (1901) . . 6 C. W. N., 113

BENGAL PRIVATE FISHERIES PROTECTION ACT (BEN. ACT II OF 1889)—*concluded.*

(heading repeated above)

BENGAL REGULATION.

——1817—XX, s. 10—

See ZAMINDARI DAKS. [I. L. R., 23 Calc., 293

——1819—VIII—

See LIMITATION ACT, 1877, SCH. II ART. 23 . I. L. R., 30 Calc., 440

See PATNI TENURE. [I. L. R., 23 Calc., 714

————ss. 3, 4—

See SALE FOR ARREARS OF RENT—EFFECT OF SALE . I. L. R., 29 Calc., 813

————s. 9—

—Right of suit to recover deficiency for which [illegible] *—*A suit [illegible] defaulting [illegible] 9 of Reg. [illegible] Civil Court. [illegible] BANDO- [illegible] W. N., 111

————s. 17 (3)—

See SALE FOR ARREARS OF RENT—RIGHTS OF PURCHASERS . 6 C. W. N., 794

——1825—XI, s. 4—

See MALIKANA . . 7 C. W. N., 846

——1832—VII, s. 9—

See CONVERTS . I. L. R., 25 All., 546

BENGAL RENT ACT (X OF 1859).

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [I. L. R., 28 Calc., 532

——s. 23 (4)—

See RENT, SUIT FOR. [I. L. R., 28 Calc., 485

——s. 23 (5)—

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT . 6 C. W. N., 199

BENGAL RENT ACT (BEN. ACT VIII of 1869).

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.
[I. L. R., 28 Calc., 135

BENGAL SURVEY ACT (BEN. ACT V OF 1875).

——s. 45—

See PENAL CODE, s. 186
[6 C. W. N., 120

BENGAL TENANCY ACT (VIII OF 1885).

See LANDLORD AND TENANT

——enhancement of rent—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS
[I. L. R., 30 Calc., 1033

——s. 3, cl. (2)—

See post, s. 60 . . 5 C. W. N., 482

——s. 3, cl. (16)—

See SALE FOR ARREARS OF RENT—INCUMBRANCES . I. L. R., 28 Calc., 66

——s. 5 (5)—

See GHATWALI TENURE . 6 C. W. N., 94

—*Bengal Tenancy Act (VIII of 1885), ss. 5 (5), 107—Presumption as to kind of tenancy—Tenure-holder and raiyat*—Res judicata—*Decision of Revenue Court, effect of—Civil Procedure Code (Act XIV of 1882), s. 13—Construction of statute*—Where the area of land

Procedure Code, a decree in a previous suit cannot be pleaded as *res judicata* in a subsequent suit unless the Judge by whom it was made had jurisdiction to try and decide, not only the particular matter in issue, but also the subsequent suit itself in which the issue ... raised. In this respect this section

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 13—

1.—*Sale, confirmation of—Deposit of landlord's fee—Sale certificate, application for—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 178—Civil Procedure Code (Act XIV of 1882), s. 244—Appeal—Second appeal.*—There is no

be regarded as one under s. 244, ... Civil Procedure Code, and as such an appeal and second appeal lie. KRISHNA CHANDRA DUTT *v.* ANUKUL CHANDRA CHUCKERBUTTY (1901) . . 6 C. W. N., 190

2.—*Confirmation of sale—Subsequent payment of landlord's fee—Jurisdiction of Court.*—An auction sale was confirmed by the Court, overlooking through mistake the fact that no landlord's fee was paid under s. 13 of the Tenancy Act. Subsequently, on the discovery of the mistake, the purchaser applied for the ... after payment of the land- ... to that ... Court ... JOHESH ... (1903) ... ., 388

3.—*Confirmation of sale without payment of landlord's fee—Sale, validity of—Application for possession by auction-purchaser—Civil Procedure Code (Act XIV of 1882), ss. 244, 318—Appeal—Second appeal.*—Where the sale of a permanent tenure was confirmed without previous ... of the landlord's fee in the manner required

sion under s. 318, Civil Procedure Co... (1899) I. L. R. ... ANDRA ... 591

——s. 22 (1)—

See SALE FOR ARREARS OF RENT—INCUMBRANCES . I. L. R., 28 Calc., 205

——s. 29—

—*Landlord and tenant—Suit to set aside a kabuliyat—Enhancement of rent by contract—Consideration for such contract—Agreement to pay enhanced*

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 29—*concluded.*

rent in settlement of bonâ fide disputes—Res ju- [illegible]

[illegible]

—— s. 30—

—*Enhancement suit—Equitable rate—Prevailing rate.*—In a suit for enhancement of rent under s 30 of the Bengal Tenancy Act, the case was referred to arbitration, on the application of the parties, and the arbitrator settled a fair and equitable rate *Held* that the arbitrator had jurisdiction to do so, inasmuch as the parties declared that they would be bound by what the arbitrator would decide. GANGA CHARAN ROY *v.* SASTI MANDAL (1901)
[6 C. W. N., 614

—— s. 48, cl. (*a*)—

[illegible]

—— s. 49—

See LANDLORD AND TENANT—
EJECTMENT—NOTICE TO QUIT;
[I. L. R., 28 Calc., 308
" 29 Calc., 231
6 C. W. N., 377

TRANSFER BY TENANT.
[6 C. W. N., 916, 919

—— s. 50—

See LAND ACQUISITION ACTS (XVIII OF 1885 AND I OF 1894).
[I. L. R., 30 Calc., 801

1.—*Presumption as to uniform payment of rent*—When a tenant has paid rent, for over twenty years prior to the date of suit, at a uniform rate which has not changed, the presumption of law, under s. 50, sub-s (2), of the Bengal Tenancy Act, would arise if there is no allegation or proof that a tenancy commenced in a particular year after the Permanent Settlement. The mere fact that the tenant shows by documentary evidence that the rate of rent has not changed from a particular year would not preclude him from the benefit of the presumption given by sub-s. (2) of s 50. MONGOLA *v.* KUMUD CHUNDER SINGH (1900) . 5 C. W. N., 60

2.—*Sub-s. (2)—" Suit or other proceeding under this Act," meaning of—Suit by landlord to*

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 50—*concluded.*

eject the purchaser of a holding on the ground of non-transferability—Whether the presumption arises in such suit.—The application of s. 50 of the Bengal Tenancy Act is limited to a suit or proceeding under the Bengal Tenancy Act. Where the plaintiff sued for recovery of possession, alleging that the defendant was a trespasser, and the defendant claimed to be a tenant: *Held* that, until the fact that defendant was a tenant was made out, the suit could not be said to be one under the Bengal Tenancy [illegible]

—— s. 51—

—*Civil Procedure Code (Act XIV of 1882), s. 13—Res judicata—Rent-suit—Presumption*—A decision in a previous rent suit, as to the amount of rent payable, was held not to operate as *res judicata* in a suit for the rent of subsequent years, although it was held that it gave rise to a presumption under s. 51 of the Bengal Tenancy Act that the rents for subsequent years remained the same. BENI PERSHAD KOERI *v.* RAJ KUMAR CHOWDRY (1902)
[6 C. W. N., 589

—— s. 52—

See post, ss. 90, 52, 183 . 7 C. W. N., 93
See post, s. 158 . . 6 C. W. N., 592

1.—*Landlord and tenant—Bengal Tenancy Act (VIII of 1885), ss. 52, 154—Additional rent for excess land—Back rent—Suit for rent.*—There is [illegible]

2.—*Additional rent, suit for—Enhancement*—A landlord cannot successfully claim additional rent under s. 52 of the Bengal Tenancy Act in respect of [illegible] or adjusted. RAJENDRA LAL GOSWAMI *v.* CHUNDER BHUSAN GOSWAMI (1901) . . 6 C. W. N., 318

3—*Additional rent for increased area—Landlord and tenant—Bengal Tenancy Act (VIII of 1885), ss. 52, 74—Limitation*—All impositions upon tenants, under the denomination of abwab, etc, and

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 52—*concluded.*

"all stipulations and reservations for the payment of such," referred to in s 74 of the Bengal Tenancy Act, relate to both past and future stipulations: such stipulations made before the passing of the Bengal Tenancy Act are therefore void. The right to recover additional rent for increased area is a [illegible]

TAGORE (1898) . . 5 C. W. N., 482

——s 60—

—*Suit for rent—Assignment by landlord of portion of interest to a mortgagee—Registered proprietor—"Rent due"—Right of mortgagee, whether may be set up in defence—Bengal Tenancy Act (VIII of 1885), ss. 3, cl. (3), 60*—In a suit for rent [illegible]

——s. 61—

See post, SCH. III, ART 2 (*a*) [I. L. R., 29 Calc., 283

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT 7 C. W. N., 720

——s. 65—

See post, s. 188 . 6 C. W. N., 124

See ACQUIESCENCE . 7 C. W. N., 170

See SALE FOR ARREARS OF RENT—

INCUMBRANCES; 6 C. W. N., 834

RIGHTS AND LIABILITIES OF PURCHASERS. 6 C. W. N., 794, 877

——ss. 65 and 188—

—*Sale of a tenure—Co-landlord's decree—Execution.*—The sale of a tenure in execution of a decree [illegible]

SRIMANTA GHOSE (1901) I. L. R., 29 Calc., 219

——s. 67—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

[I. L. R., 28 Calc., 227
29 Calc., 674
7 C. W. N., 203, 720

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 72—

See LANDLORD AND TENANT—TRANSFER BY LANDLORD . 7 C. W. N., 454

——s. 74—

See CESS . I. L. R., 28 Calc., 17
[6 C. W. N., 360

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT
[I. L. R., 29 Calc., 674

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS . I. L. R., 30 Calc., 1011

——s. 85—

See LANDLORD AND TENANT—TRANSFER BY TENANT.
[6 C. W. N., 377, 916, 919
I. L. R., 29 Calc, 148

See SALE FOR ARREARS OF RENT—INCUMBRANCES . I. L. R., 28 Calc, 205

——s. 86—

—Nothing in s 86 of the Bengal Tenancy Act requires the surrender of a raiyat's occupancy right to be in writing. KHANKAR ABDUR RAHMAN *v.* ALI HAFEZ (1900) . . I. L. R., 28 Calc., 256:
[s.c., 5 C. W. N., 351

——s. 88—

[illegible]

the landlord with the receipt of any proportionate rate of rent by the tahsildar. BENI PERSHAD KOERI *v.* GOBERDHAN KOERI (1902)
[6 C. W. N, 823

——s. 89—

See LIMITATION ACT, 1877, SCH. II, ART. 3.
[7 C. W. N., 218

——ss. 90, 52 and 188—

—*Suit for measurement of area and increased rent—Right of suit—Right of landlord to measure when there is an intermediate tenant—Contract executed between landlord and tenant before the passing of the Bengal Tenancy Act—Estoppel—Joint landlords, who are*—A *kabuliyat* executed, before the passing of the Bengal Tenancy Act, by defendant No. 1, the holder of a *dar-mourasi patta*, in favour of his immediate landlord, a *mokurarridar*, provided that the former should have his name entered in the zamindar's *sherista* in place of the *mokurraridar's*, and pay rent direct to the zamin- [illegible]

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——**ss. 90, 52 and 188**—*concluded.*

spectively. The agreement was ratified by the zamindar. On the zamindar suing defendant No. 1

s. 188, Bengal Tenancy Act. *Panchanan Banerji*

(1902) . . . . . 7 C. W. N., 93

——**ss. 101 to 115 (Ch. X)**—

See Rent, Suit for . 6 C. W. N., 914

——**ss. 101 to 111A (Ch. X)**—

—*Jurisdiction of Civil Court—Suit for possession and mesne profits—Suit to settle dispute prior to completion of record-of-rights—Status of tenants—Civil Procedure Code (Act XIV of 1882), ss 11, 12*—There is no legal bar to the maintenance of a suit in the Civil Court for possession and mesne profits by ejectment of the defendants from certain plots of land in respect of which a survey and preparation of a record-of-rights have been ordered under Ch. X of the Bengal Tenancy Act (VIII of 1885, as amended by Bengal Act III of 1898), in which record

Chowdhry v *Durga Churn Law (1897), I L. R., 25 Calc., 146,* distinguished Troylokhyanath Bose v. Macleod (1900) . I. L. R., 28 Calc., 28

——**ss. 101 to 108 (Ch. X)**—

—*Res judicata—Civil Procedure Code (Act XIV of 1882), s. 13—Bengal Tenancy Act (VIII of 1885), ss. 101, 102, 103, 104, 105. 106, 107, 108, 117, 118, 119, 143, 158, 189—Record-of-rights—Survey and measurement of land—Rules—Jurisdiction—Revenue-officer—Court—Landlord and*

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——**ss. 101 to 108 (Ch. X)**—*concluded.*

tenant—Ejectment—Bengal Act VIII of 1869, ss. 38, 39—Bengal Act V of 1875.—Ss. 104 to 108 of

Ali Khan (1902)
[I. L. R., 30 Calc., 339 : s.c., 7 C. W. N., 33

——**s. 103A**—

See Res Judicata—Adjudications.
[I. L. R., 28 Calc., 471

——**s. 104 (2)**—

See Res Judicata—Competent Court—Revenue Courts.
[I. L. R., 29 Calc., 252

——**s. 105**—

See Res Judicata—

Adjudications ;
[I. L. R., 28 Calc., 471

Competent Court — Revenue Courts . 5 C. W. N., 798

——**s. 106**—

See post, s. 188 . 7 C. W. N., 400

See Res Judicata—

Parties ; . 5 C. W. N., 421

Competent Court — Revenue Courts . 5 C. W. N., 798

——**s. 107**—

See Res Judicata—Competent Court—Revenue Courts . 6 C. W. N., 825
[I. L. R., 29 Calc., 252

——**s. 107 (before amendment)**—

—*Bengal Tenancy Act (VIII of 1885), ss. 107, 109A—Public Demands Recovery Act (Bengal*

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 107 (before amendment)—*concluded.*

estate being under the management of the Court of Wards, a certificate was issued in 1895-96 for the realization of arrears of rent due from *B*, whose objection to the certificate was disallowed in January, 1897, and in July he instituted this suit for its cancellation or modification. *Held* (1) that the

NATH ROY *v.* ABDOOL (1901)
[I. L. R., 28 Calc., 676

——s. 109A—

See APPEAL—ORDERS . 7 C. W. N., 440

——ss. 117 to 119—

See ante, ss. 101 TO 108
[I. L. R., 30 Calc., 339

——s. 120, sub-s. (2)—

—*Zerait—Admission subsequent to 2nd March, 1883.*—The mere fact of certain land having been taken on lease as zerait by the defendant would not give to that fact any evidentiary value, when the letting was not—as s. 120, sub-s. (2), Bengal Tenancy Act, requires, to make it evidence—before the 2nd day of March, 1883. SHEE BAHADUR SAHU *v.* MACKENZIE (1902) . . 7 C. W. N., 400

——s. 121—

See LIMITATION ACT, 1877, SCH. II, ART. 28 . . . 7 C. W. N., 728

——ss. 121, 122 and 140—

—*Application for distraint permissible for arrears of rent and interest, but not for damages—Separate application for each holding—Wrongful*

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——ss. 121, 122 and 140—*concluded.*

Bengal Tenancy Act should be computed, discussed. SHEOBARAT SINGH *v.* NAWRANGDEO NARAIN SINGH (1901) . . . I. L. R., 28 Calc., 364

——s. 140—

See LIMITATION ACT, 1877, SCH. II, ART. 28 . . . 7 C. W. N., 728

——s. 143—

See ante, ss. 101 TO 108.
[I. L. R., 30 Calc., 339

——s. 144—

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . I. L. R., 30 Calc., 453

——s. 148—

1.—cl. (b)—*Identification of the land in suit—Description.*—Case where it was held that the description of a tenure, given in a plaint in a suit for rent, was *primâ facie* sufficient for identification, and that the plaint ought not to have been rejected in a summary way. DURGA CHURN LAW *v.* KALA CHAND BISWAS (1903) . 7 C. W. N., 615

2.———— *Rent suit, issue in—Plaint, whether to contain extent and boundaries of the lands.*—In a suit for recovery of rent, where the allegation was that the defendant held a tenure consisting of 61 odd bighas of land within certain

Appellate Court decided the suit without deciding

(1900) . . . . 5 C. W. N., 121

3.—cl. (h) —*Decree for rent obtained by a landlord who ceases to have interest in the land—Execution of decree—Assignment—Construction—Strict interpretation.*—A decree obtained in a suit for rent, brought by a landlord who ceases to have the suit, s. 148, apply to decree is

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 148—*concluded.*

——s. 150—

—*Rent, suit for—Money admitted to be due to landlord—Burden of proof—Plea of 'confession and avoidance'—Rate of rent.*—S. 150 of the Bengal Tenancy Act is limited in its operation to those cases in which the plea of the tenant is one in respect of which the burden of proof lies upon him;

——s. 153—

See APPEAL—ACTS—BENGAL TENANCY ACT, s. 153 . . 7 C. W. N., 908

See SPECIAL OR SECOND APPEAL.
[5 C. W. N., 515
I. L. R., 28 Calc., 116

——s. 155—

—*Notice—Ejectment, suit for—Alternative relief—Limitation.*—A suit for the ejectment of a tenant for misuse of the land was dismissed by the Court below on the ground that the notice served on the tenant under s. 155 of the Bengal Tenancy Act was bad, as the compensation claimed in the notice for the misuse was demanded in the alternative *Held* that the notice was not bad in law merely because the compensation was demanded in the alternative. *Pershad Singh* v. *Ram Pertab Roy (1894), I. L. R., 22 Calc., 77,* distinguished. BOIDYA NATH PANDAY *v.* GHISU MANDAL (1902)
[I. L. R., 30 Calc., 1063

——s. 158—

See ante, ss. 101 TO 108.
[I. L. R., 30 Calc., 339

—*Bengal Tenancy Act (VIII of 1885), ss. 52, 158, cl (d)—Jurisdiction—Additional rent for additional land, whether it can be determined*—Under s 158, cl. (*d*), of the Bengal Tenancy Act, a Court has to determine what the existing rent is, and it has no jurisdiction to determine what the rent should be; and consequently additional rent for additional area cannot be assessed in such a proceeding. NARAIN THAKUR *v.* LUCHMESHWAR SINGH (1901)
[6 C. W. N., 592

——ss. 160 (*g*), 163—

See SALE FOR ARREARS OF RENT—EFFECT OF SALE . I. L. R., 29 Calc., 813

——s. 167—

See LIMITATION ACT, 1877, s. 7.
[I. L. R., 29 Calc., 813

See MESNE PROFITS—MODE OF ASSESSMENT AND CALCULATION
[I. L. R., 30 Calc., 536

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 167—*concluded.*

See SALE FOR ARREARS OF RENT—INCUMBRANCES;
[I. L. R., 28 Calc., 66, 180, 205;
5 C. W. N., 272

EFFECT OF SALE.
[I. L. R., 29 Calc., 813

——s. 169—

—*Sub-s. (1), cl. (c)—"Date of sale," meaning of.*—The words "date of sale," in s. 169, sub-s. (*1*), cl. (*c*), of the Bengal Tenancy Act, mean the date of confirmation of sale, and not the actual date of sale. MATANGINI CHAUDHURANI *v.* SREENATH DAS (1903) . . . 7 C. W. N., 552

——s. 170—

—*Civil Procedure Code, s. 278—Whether claim maintainable, to a tenure or holding attached in execution of a decree for arrears of rent.*—*Held* by the Full Bench (BANERJEE, *J*, dissenting) that s. 170 of the Bengal Tenancy Act (VIII of 1885) bars a claim, under s. 278 of the Civil Procedure Code, to a tenure or holding attached in

s.c., 5 C. W. N., 474

——s. 178 (*h*)—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.
[I. L. R., 28 Calc., 227
" 29 Calc., 674

——s. 179—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.
[I. L. R., 29 Calc., 674

——s. 181—

See GHATWALI TENURE
[6 C. W. N., 94

——s. 184, and Sch. III, Art. 3—

—*Limitation Act (XV of 1877), Sch. II, Art. 47—Attachment under s. 146 of the Criminal Procedure Code—Appellate Court, power of, to take*

barred by limitation under Art. 3, Sch. III of the Bengal Tenancy Act; and, the limitation having already commenced to run from the 9th February, 1895, *i e.,* from the date of the actual dispossession, the plaintiff could not have a fresh start of limitation from the date of the subsequent attachment by the Criminal Court. *Held,* further, that the lower

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 184, and Sch. III, Art. 3—*concluded.*

Appellate Court was empowered to take cognizance of the question of limitation under s. 4 of the Limitation Act and s. 184 of the Bengal Tenancy Act, although it had not been raised as a defence in the Court of first instance, if upon the proceedings in the case it was clear that the suit was barred by limitation. DEO NARAIN CHOWDHURY *v.* WEBB (1900)
[I. L. R., 28 Calc., 86 ;
s.c., 5 C. W. N, 160

——s. 188—

See ante, ss. 65 AND 188.

See ante, ss. 90, 52, 188.

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—KABULIYATS.
[7 C. W. N., 670

1.—*Ss. 65, 188—Money decree—Suit for rent for four years—Plaintiffs constituting the entire body of landlords for two years—Whether decree may*

Act, but only a money decree under the ordinary law. *Beni Madhub Roy v. Joad Ali Sarkar*

2.—*Co-sharers, suit by—Civil Procedure Code, s. 53.*—A suit by a co-sharer landlord for his proportionate share of the rent cannot be maintained

sions under s 53 of the Civil Procedure Code LALA RAM SARAN LAL *v.* NEM NARAIN SINGH (1902)
[6 C. W. N., 326

3.—*Bengal Tenancy Act, s. 106—Joint landlords—"Anything which the landlord is under this Act required or authorized to do."*—One of

authorized to do," as used in s. 188. SHER BAHADUR SAHU *v.* MACKENZIE (1902)
[7 C. W. N., 400

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 189—

See ante, ss. 101 TO 108.
[I. L. R., 30 Calc., 339

————rules made under—

See RULES MADE UNDER ACTS—BENGAL TENANCY ACT.
[I. L. R., 28 Calc., 590

——Sch. III—

1.—Art. 2, cl. (a)—*Bengal Tenancy Act (VIII of 1885), s. 61, and Sch. III, Art. 2 (a)—Deposit of rent—Notice of deposit on one of several joint landlords, effect of—Limitation.*—Service of notice, on one of the landlords, of the deposit of rent under s. 61 of the Bengal Tenancy Act (VIII of 1885) has not the effect of reducing the period of limitation to six months as provided in Art. 2 (*a*) of Sch. III to

2.—Art. 3—*Limitation—Dispossession by a co-*

years' rule SARAFUDDIN MONDUL *v.* CHANDRA MANI GUPTA (1900) . . 5 C. W. N., 405

3. ————*Dispossession by a landlord not acting as such—Suit by occupancy raiyat—Limitation.*—Art. 3 of Sch. III to the Bengal Tenancy

4. ————*Limitation—Suit by an occupancy raiyat where the landlord has no hand in the ouster.*—When an occupancy raiyat is dispossessed, and the landlord has had no hand in the ouster, the period of limitation applicable is twelve years, and not two years under Art. 3, Sch III, to the Bengal Tenancy Act. The case of *Hara Kumar Nath* v.

BENGAL TENANCY ACT (VIII OF 1885)—*concluded.*

——Sch. III—*concluded.*

5.—Art. 3—*Dispossession by a fractional co-sharer landlord—Occupancy raiyat, suit for recovery of possession by—Limitation.*—The special limitation of two years provided by Art 3 of Sch. III to the Bengal Tenancy Act is restricted to suits between persons occupying the position of landlord and tenant, for it is in regard to such relations that the Act has been designed. It is of no consequence whether the ejectment is by some co-sharers or by the entire body of landlords. ANNADA SUNDARI CHANDALINI *v.* KEBULRAM CHANGA (1903)
[7 C. W. N., 542

——Art. 6—

See LIMITATION ACT, 1877, SCH. II, ART. 179—LAW APPLICABLE TO APPLICATION FOR EXECUTION.
[I. L. R., 29 Calc., 54

6. ————*Decree for rent by a co-sharer landlord for a sum not exceeding R500 in value—Application for execution—Limitation Act (XV of 1877). Sch. II, Art. 179.*—An application for execution of a decree, for a sum not exceeding R500 in value, obtained by one of two or more [illegible]

[illegible] 86, [illegible] HA [illegible]
[illegible] 63

BEQUEST.

See CHARITABLE BEQUEST

See WILL—CONSTRUCTION.
[I. L. R., 26 Mad., 433

——of self-acquired property—

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.
[I. L. R., 24 Mad., 429

——to a class—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS . I. L. R., 29 Calc., 699

——to "eldest son to be born"—

See WILL—CONSTRUCTION
[5 C. W. N., 729

——to heir—

See MAHOMEDAN LAW—INHERITANCE.
[I. L. R., 30 Calc., 683

BEQUEST—*concluded.*

——to idol—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST TO IDOL.

——to stranger—

See MAHOMEDAN LAW—WILL.
[I. L. R., 26 Bom., 497

——to widow—

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . . 5 C. W. N., 300

BIGAMY.

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.
[I. L. R., 25 All., 132, 209

—*Indian Penal Code (Act XLV of 1860), ss. 109, 494—Marriage of a Hindu girl given a second* [illegible]

BILL OF EXCHANGE.

See INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE.
[I. L. R., 30 Calc., 446

See LETTER OF CREDIT
[I. L. R., 25 Bom., 706

BILL OF LADING.

[illegible]

Jeddah The bill of lading stated that the goods were shipped subject to the condition that any claim for short delivery, etc., should be made in writing in Bombay within two months of date of steamer's [illegible]

BILL OF LADING—*continued.*

settled." This letter was given to the plaintiff, to be presented by him. Nothing was, however, gained

On the 28th January, 1902, the plaintiff filed this

contended that the defendants, by granting the shortage certificate, and by their letters of the 18th July and 20th December, had waived their rights under the

2.—*Sea-insurance—Stamp duty—Stamp Act (II of 1899), ss. 2 and 7, and Sch. I, Art. 47A—"Contract for sea-insurance"—"Policy of sea-insurance"*.

to When by such a document a company, for an increased payment, takes upon itself all risks attending goods while on board a ship or vessel, the document is not a "policy of sea-insurance," but only a "contract for sea-insurance," and is therefore not liable to be stamped as a "policy of sea insurance" under the Act IN THE MATTER OF

BILL OF LADING—*concluded.*

A REFERENCE UNDER THE INDIAN STAMP ACT, 1899 (1903) . I. L. R., 30 Calc., 565

BLANK PAPER.

——signature on—

See DEED—EXECUTION. [6 C. W. N., 329

BOARD OF EXAMINERS.

of different members. IN THE MATTER OF RUDRA NARAIN ROY (1901) . I. L. R., 28 Calc., 479

BOARD OF REVENUE.

——rules of—

See BENGAL CESS ACT (BEN. ACT IX OF 1880) . I. L. R., 28 Calc., 637

BOMBAY ABKARI ACT (BOM. ACT V OF 1878).

——ss. 3 (9) and 62—*Medicated article—Intoxicating drug—Cocaine.*—The term "medicated article," as used in s 62 of the Bombay Abkari Act (Bom. Act V of 1878), applies to something which is ... is imbued ... fore does ... *se.* The ... cl. (9),

BOMBAY ACT.

——1863—VI—

See HACKNEY CARRIAGE ACT.

——1873—VI—

See BOMBAY DISTRICT MUNICIPAL ACT.

——1874—III—

See HEREDITARY OFFICES ACT.

——1876—II—

See LAND-REVENUE. [I. L. R., 25 Bom., 714, 752

BOMBAY ACT—*concluded.*

——1876—III—

See MAMLATDARS' COURTS ACT.

——1878—V—

See BOMBAY ABKARI ACT.

——1879—V—

See BOMBAY LAND-REVENUE CODE.

——1880—I—

See KHOTI SETTLEMENT ACT.

——1884—II—

See BOMBAY DISTRICT MUNICIPAL ACT.

——1887—IV—

See GAMBLING—

Bom. Act IV of 1887; [I. L. R., 26 Bom., 533

Bom. Act IV of 1887, s. 8. [I. L. R., 26 Bom., 641

——1888—III—

See BOMBAY CITY MUNICIPAL ACT.

————VI—

See GUJARAT TALUKDARS ACT.

——1898—IV—

See BOMBAY CITY IMPROVEMENT ACT

——1901—III—

See BOMBAY DISTRICT MUNICIPAL ACT.

BOMBAY CITY IMPROVEMENT ACT (BOM. ACT IV OF 1898).

—*Jurisdiction—Legislative powers of Governor of Bombay in Council—Jurisdiction of High Court to consider whether Act is ultra vires—Subordinate Legislature—Creation of new Courts—Land Acquisition Act ...*

BOMBAY CITY IMPROVEMENT ACT (BOM. ACT IV OF 1898)—*continued.*

Collectors, having made an award of the compensation to be allowed, gave notice to the plaintiffs to hand over possession. The plaintiffs thereupon

BOMBAY CITY IMPROVEMENT ACT (BOM. ACT IV OF 1898)—*concluded.*

payable; (4) and that, applying the principle of the

given. HARI PANDURANG *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1903)
I. L. R., 27 Bom., 424

BOMBAY CITY LAND-REVENUE ACT (BOM. ACT II OF 1876).

——ss. 8, 9—

See LAND-REVENUE.
I. L. R., 28 Bom., 339

BOMBAY CITY MUNICIPAL ACT (BOM. ACT III OF 1888).

——s. 195—

See post, s. 527 AND s. 195.

——s. 297—*Municipality—Provision to make*

JAMAL *v.* MUNICIPAL COMMISSIONER OF BOMBAY (1900) . . . . I. L. R., 25 Bom., 107

——s. 527 and s. 195—*Notice of suit, when necessary—Refund of town duties—Limitation—*

notice of the suit was therefore given, but the suit

BOMBAY CITY MUNICIPAL ACT (BOM. ACT III OF 1888)—*concluded.*

brought in pursuance of it was not filed until the

dant could not claim that his conduct had any relation to the execution of the Act if he knowingly and intentionally acted in contravention of its provisions: here the amount payable by way of refund was ascertained, and the plaintiff's right to recover it was admitted, and the refusal to refund was a deliberate and conscious contravention of the provisions of the Act: in such a case it could not be held that the money was *bonâ fide* withheld in execution of the Act, and, that being so, the defendant was not entitled to notice under s. 527; (2) that the suit was therefore not one of the class referred to in Art. 2, Sch. II, to the Limitation Act (XV of 1877), and was not barred: when it is provided in an Act that notice shall be given to the defendant of any suit intended to be brought in respect of an act done in pursuance or execution or intended execution of the Act or in respect of neglect or default in its execution, such provision does not apply when the action is brought on a contract, for the conduct giving rise to the action is a wrongful act or omission under the contract, as distinct from one in the execution of the Act. RANCHORDAS MOORARJI *v.* MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY (1901)
I. L. R., 25 Bom., 387

BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT VI OF 1873).

——ss. 17, 48 and 64—*Public street—Street lighted and swept by Municipality.*—The mere

——ss. 33 and 42—*Municipality—Private street—Balcony projecting over private street—*

——s. 48—

See ante, ss. 17, 48 AND 64.

——s. 64—

See ante, ss. 17, 48 AND 64

BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT II OF 1884).

——s. 30—

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT.
I. L. R., 27 Bom., 618

——s. 48—*Municipality—Suit against Muni-*

BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT III OF 1901).

——ss. 82 (c) and 86—*House-tax—Suit for injunction restraining levy of tax—Right to sue in Civil Court without first proceeding under s. 86—Injunction, when granted—Specific Relief Act (I of 1877), s 56—Discretion.*—The Surat City Municipality served, under s. 82, cl. (3), of the Bombay District Municipal Act (III of 1901), a notice of demand upon the plaintiff for house-tax due by him. The plaintiff, instead of proceeding under s 86 of the Act, instituted a suit in the Civil

that s 86 was permissive merely, and that it did

injunction prayed for in this case could not be granted. By s 56 of the Specific Relief Act, an injunction cannot be granted where efficacious relief can be obtained by any other usual mode of proceeding S. 86 of Bombay Act III of 1901 gave a remedy to the plaintiff, but instead of resorting to it he filed this suit for an injunction. It was discretionary for a Court to grant an injunction, and that discretion must be exercised judicially, with extreme caution, and only in very clear cases. This was not a case of that kind. CHUNILAL THAKORDAS MODI *v.* SURAT CITY MUNICIPALITY (1903)
[I. L. R., 27 Bom., 403

BOMBAY LAND-REVENUE CODE (BOM. ACT V OF 1879).

See LAND-REVENUE.
[I. L. R., 26 Bom., 504

BOMBAY LAND-REVENUE CODE (BOM. ACT V OF 1879)—*concluded.*

See LIMITATION ACT, 1877, SCH. II, ARTS 120 AND 110 . I. L. R., 25 Bom., 556

——s. 15—*Land-revenue Code (Bombay Act V of 1879), ss. 4, 13, 15, 18, 19, and 20—Mamlatdars' Courts Act (Bombay Act III of 1876), s. 3—Mamlatdar—Substitute designated under the Land-revenue Code—Exercise of the powers of Mamlatdar.*—A substitute designated under s. 15 of the Land-revenue Code (Bombay Act V of 1879) cannot exercise the powers conferred by the Mamlatdars' Courts Act (Bombay Act III of 1876) on the Mamlatdar to whose office he has temporarily succeeded. DEORAV *v.* NARAYANDAS HARAKCHAND (F.B. 1900) . . . I. L. R., 25 Bom., 318

——s. 84—

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT
[I. L. R., 26 Bom., 360

——ss. 119, 120, 121—*Boundary dispute—Settlement of such dispute by Collector—Civil Court's jurisdiction—Jurisdiction.*—S 121 of the

BOMBAY LOCAL BOARDS' ACT, 1884 (BOM. ACT I OF 1884).

See LAND-REVENUE.
[I. L. R., 26 Bom., 504

BOMBAY LOCAL FUNDS ACT, 1869 (BOM. ACT III OF 1869).

——s. 8—

See LAND-REVENUE.
[I. L. R., 26 Bom., 504

BOMBAY MUNICIPAL ACTS.

See BOMBAY CITY MUNICIPAL ACT.
See BOMBAY DISTRICT MUNICIPAL ACT.

BOMBAY REGULATION.

——1827—II, s. 21, cl. 1—

See JURISDICTION OF CIVIL COURT—CASTE . . I. L. R., 26 Bom., 174

————IV, s. 26—

See MAHOMEDAN LAW—CUSTOM.
[I. L. R., 26 Bom., 198

BONA FIDES.

See BENGAL PRIVATE FISHERIES PROTECTION ACT . . 6 C. W. N., 118

See EXECUTION OF DECREE—MODE OF EXECUTION—INSTALMENTS.
[I. L. R., 24 All., 85

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.
[6 C. W. N., 886
7 C. W. N., 117

See PARTIES—SUBSTITUTION OF PARTIES—DEFENDANTS . . 7 C. W. N., 529

——bonâ fide claim of right—

See MISCHIEF . . 7 C. W. N., 859

——test of—

See TRANSFER OF PROPERTY ACT, s. 53.
[I. L. R., 27 Bom., 322

BOND.

See FORGERY . . 5 C. W. N., 897

See GUARANTEE I. L. R., 28 Calc., 597

See INTEREST—

STIPULATIONS AMOUNTING OR NOT TO PENALTIES;

MISCELLANEOUS CASES—BOND.
[I. L. R., 25 All., 284

See LIMITATION ACT, 1877, SCH. II, ART. 91 . I. L. R., 27 Bom., 560

See SECURITY FOR GOOD BEHAVIOUR
[I. L. R., 29 Calc., 455

——alteration of—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.
[I. L. R., 25 All., 580

——bail bond—

See RECOGNIZANCE TO APPEAR.
[I. L. R., 30 Calc., 107

—*Suit for contribution by debtor who has paid money due under a bond against heir of co-obligor of bond—Limitation—Act XV of 1877 (Indian Limitation Act), s. 8—Minority—Nature of the rights of co-obligees discussed* —In he case of co-obligees of a money bond, in the absence tf anything to the contrary, the presumption of law o that they are entitled to the debt in equal shares as tenants in common. *Steeds* v. *Steeds, 22 Q. B. D.*, 537, referred to. Hence, where one of two co-obligees is a minor, limitation will run as against the other co-obligee, who is not a minor, in respect of that portion of the debt to which he is entitled; and s. 8 of the Indian Limitation Act, 1877, will not apply. MANZUR ALI *v.* MAHMUD-UN-NISSA (1902)
[I. L. R., 25 All., 155

BOOK.

See EVIDENCE—ACCOUNTS AND ACCOUNT BOOKS.

BOOK—*concluded.*

See TRADE MARK.
[I. L. R., 26 Bom., 289

BOUNDARIES.

——confusion of—

See LANDLORD AND TENANT—OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT.
[5 C. W. N., 846

——description of, in plaint—

See BENGAL TENANCY ACT, s. 148, CL. (b).
[5 C. W. N., 121
7 C. W. N., 615

——dispute as to—

See BOMBAY LAND-REVENUE CODE, ss. 119, 120, 121 I. L. R., 25 Bom., 312

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC.
[6 C. W. N., 161

BRAHMO SAMAJ.

See HINDU LAW—ADOPTION—EVIDENCE OF ADOPTION I. L. R., 30 Calc., 999

See PROBATE AND ADMINISTRATION ACT (V OF 1881) . . 7 C. W. N., 895

BREACH OF CONDITION.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.
[I. L. R., 25 Bom., 32

BREACH OF CONTRACT.

See ACT—1859—XIII.

See CONTRACT—BREACH OF CONTRACT.

See DAMAGES—

MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT;

SUITS FOR DAMAGES—BREACH OF CONTRACT.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT.

See LIMITATION ACT, 1877, SCH. II, ART. 116
[I. L. R., 25 Mad., 50, 55, 587

See VENDOR AND PURCHASER—BREACH OF COVENANT . . 7 C. W. N., 905

——by decree-holder—

See DECREE—CONSTRUCTION OF DECREE—CONSENT DECREE.
[I. L. R., 28 Calc., 557

BREACH OF COVENANT.

See VENDOR AND PURCHASER—BREACH OF COVENANT.

BREACH OF THE PEACE.

See RECOGNIZANCE TO KEEP PEACE.

——dispute likely to cause—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO.

——meaning of "offences involving a breach of the peace"—

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 30 Calc., 366

BREACH OF PROMISE OF MARRIAGE.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—BREACH OF PROMISE OF MARRIAGE. [I. L. R., 24 Mad., 652

BREACH OF TRUST.

See CRIMINAL BREACH OF TRUST.

See EXECUTOR [I. L. R., 26 Bom., 301

BREACH OF WARRANTY.

See WARRANTY, BREACH OF.

BRIBE (OFFER OF) TO PUBLIC SERVANT.

See ACCOMPLICE [I. L. R., 26 Bom., 193

BROKER.

See PARTNERSHIP—
WHAT CONSTITUTES PARTNERSHIP; [6 C. W. N., 429
RIGHTS AND LIABILITIES OF PARTNERS . . 6 C. W. N., 429

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL . 6 C. W. N., 429

—*Contract—Principal and agent—Title—Brokerage*—A contracted with a broker to negotiate for a loan of money on the first mortgage of properties, and agreed to pay brokerage. The broker

[illegible]

6 C., . C. W. N., [illegible]

BROTHER.

See [illegible]

BUILDING.

See [illegible]

——compensation [illegible]

——demolition [illegible]

——erection [illegible]

MUNICIPAL ACT (BEN. [illegible] 1899)—*continued.*

[illegible] ct CORPORATION OF CALCUTTA [illegible] MUKERJEE (1903) [7 C. W. N., 554

[illegible] and 631—*Sanction for erection* [illegible] *under misapprehension—Order* [illegible] *tion—Default Continuing offence—* [illegible] *ily fine, propriety of imposing*—S. [illegible] Municipal Act is not a section which [illegible] for the punishment of offences commit- [illegible] section, *viz*, s. 449 of the Act. S. 580 [illegible] offences, both the primary offence, [illegible] ault in carrying out an order under [illegible] secondary or continuing offence, [illegible] ch day thereafter by reason of the [illegible] the default. Where an order under [illegible] on the 8th September for demolishing [illegible] in three months, the primary offence [illegible] nce with that order was complete on [illegible] ber. After that, every day's default [illegible] the order became a distinct offence. Consequently, where summons was [illegible] the offender for such continuing [illegible] 6th May following, on a complaint [illegible] 10th March, the prosecution could [illegible]

[illegible] have been constructed in con- [illegible] visions of the Act. NOBI LAL [illegible] OF CALCUTTA (1903) [7 C. W. N., 853

[illegible]—*Mustard oil (as com-* [illegible] *to the prejudice of pur-* [illegible] *sale.*—Where a Food [illegible] es of mustard oil from [illegible] used, which, on analysis, [illegible] rated with *til* oil, and the [illegible] der s. 495 of Bengal Act III [illegible] ch adulterated oil being [illegible] own [illegible] prejudice of [illegible]

[illegible] 3 C.

BURNING-GROUND.

See MADRAS CITY MUNICIPAL ACT, 1884, ss. 392, 433 AND 458.
[I. L. R., 25 Mad., 118

BY-LAWS.

——must be reasonable—

See N. W. PROVINCES AND OUDH MUNICIPALITIES ACT (N. AND O. ACT I OF 1900), s. 128 . . I. L. R., 24 All., 439

——validity of—

See RAILWAY COMPANY.
[I. L. R., 23 All., 367

C

CALCUTTA.

——application of common law of England in—

See SLANDER . I. L. R., 28 Calc., 452

CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888).

——s. 135—*Bengal Act III of 1899, s 152—Calcutta Small Cause Court, jurisdiction of, to set aside entire valuations—Valuations in force at the commencement of Bengal Act III of 1899—Assessments—Jurisdiction to declare old* ...
still in f ...
fere—C ...
s 622—I ...
Commissi ...
made valuations of certain properties. On these valuations, assessments of rates were made for a period of six years expiring on various dates on or before the 31st March, 1900. On 1st April, 1900, Bengal Act III of 1899 came into force. Shortly before that date the Commissioners made new valuations. These valuations were made under Bengal Act II of 1888, which was then in force, and ...
com; ...
the ...
filed ...
Th ...

He further declared that the valuations in force at the commencement of Bengal Act III of 1899 were the previous valuations of 1894, and he directed those valuations to remain in force for the periods mentioned in Sch VII, col. 2, of Bengal Act III of 1899. *Held* that the Small Cause Court has jurisdiction to deal with the entire valuation and to set it aside, the only condition being that the procedure, as to the

CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888)—*concluded.*

filing of objections to the valuations, laid down by s 135 of Bengal Act II of 1888 has been correctly followed. The procedure laid down by that section as to the form of the notice is directory only. The Small Cause Court having jurisdiction to deal with the matter, the High Court cannot interfere either under s. 622, Civil Procedure Code, or s. 15 of the Charter. The Small Cause Court had no jurisdiction to declare that the assessments under the previous valuations are still in operation and must remain in force for further periods of years. CORPORATION OF CALCUTTA *v.* COHEN (1901) . 6 C. W. N., 480

——ss. 236, 241—

See CALCUTTA MUNICIPAL ACT, 1899—
ss. 391 AND 449 ; . . 7 C. W. N., 374
s. 449 . . . 7 C. W. N., 554

——ss. 247, 250, 427—*Building—Sanction—Limitation—Damages.*—A sanction to build, given by the Municipal Corporation of Calcutta under s 247 of the Calcutta Municipal Consolidation Act (Ben Act II of 1888), is absolute, and when ...

plead in defence that the officer made a mistake, and that the sanction is not binding. The Corporation, after granting sanction under s. 247 of the Act, withdrew it on the ground that the plaintiff had not complied with what it believed to be his undertaking. *Held* that the withdrawal of the sanction was not done, nor did it purport to have been done, under the Act; and that, the suit for damages having ...

CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899).

——ss. 3 (32), 320, 574—

See RECEIVER . I. L. R., 30 Calc., 721

——s. 152—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888), s 135.
[6 C. W. N., 480

——s. 320.

See ADMINISTRATOR GENERAL.
[I. L. R., 30 Calc., 927

——s. 383.

See post, s. 449 . 7 C. W. N., 554

CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899)—*continued.*

——ss. 391 and 449—*Application of, to buildings commenced before the Act, but completed after it came into operation—Bengal General Clauses Act (Ben. Act I of 1899), s. 8; saving effect of—Calcutta Municipal Consolidation Act (Ben. Act II of 1888), ss. 236, 241—Necessity of sanction to erect a detached building—Liability for building without such sanction.*—The Calcutta Municipal Act (Ben. Act III of 1899) relates only to acts done after the commencement of that Act, including acts done to complete a building commenced before the Act came into force. S 449 (3) relates to things done in breach of s 391, which itself does not relate to the alteration of or addition to a building commenced before the Act came into operation. S. 8 of the Bengal General Clauses Act (Ben. Act I of 1899) saves the operation of a repealed Act in such a case, where the building was commenced when the old Act was in force The words "material alteration of the structure of any house," in s 236 of Ben. Act II of 1888, contemplated the erection of anything on a site attached to,

and that sanction was necessary under s 236 of the latter Act, and the liability under s. 241 of that Act continued. But an order of demolition passed thereon under s. 449 (3) of Ben. Act III of 1899 was illegal. KESHUB CHANDRA SEN *v.* CALCUTTA MUNICIPAL CORPORATION (1902)

[7 C. W. N., 374

——s. 449—*Ss. 449, 452, 579, 383, 449—Calcutta Municipal Consolidation Act (Ben Act II of 1888)—Sanction of building under old Act—Deviation from plan sanctioned under old Act—Liability of owner for building in contravention of rules laid down by the new Act—Penalty—Notice under s. 383 of new Act.*—If a building is constructed in deviation from its plan as sanctioned under the old Municipal Act of 1888, so as to render the owner liable to a penalty under the said Act, then he cannot show that he acquired under the old Act, before the new Act came into operation, a right entitling him to build in contravention of the provisions and rules laid down by the new Act, so as to bring himself within cl (c) of s 8 of Ben. Act I of

precedent to a proceeding under the first sub-section

of s. 449 of that Act. CORPORATION OF CALCUTTA *v.* AMRITA LAL MUKERJEE (1903)

[7 C. W. N., 554

——ss. 449, 580 and 631—*Sanction for erection of house, given under misapprehension—Order directing demolition—Default Continuing offence—*

...er under ... offence, ... of the ... er under s. 449 was made on the 8th September for demolishing a building within three months, the primary offence of non-compliance with that order was complete on

sanction so given would not exonerate the applicant from liability under the Act if the building be afterwards found to have been constructed in contravention of the provisions of the Act. NONI LAL SETT *v.* CORPORATION OF CALCUTTA (1903)

[7 C. W. N., 853

——s. 452—

See ante, s 449.

——s. 495—*Adulteration—Mustard oil (as commercially known)—Sale "to the prejudice of purchaser"—Manufacture for sale.*—Where a Food Inspector purchased samples of mustard oil from the manufactory of the accused, which, on analysis,

CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899)—*concluded.*

W. N., 66, distinguished. MOTI LAL PAL *v.* CORPORATION OF CALCUTTA (1903)
[I. L. R., 30 Calc., 843; s.c., 7 C. W. N., 637

——ss. 502, 505—*Human food, destruction of*

——s. 574—

See ADMINISTRATOR GENERAL.
[I. L. R., 30 Calc., 927

——s. 579—

See ante, s. 449 . 7 C. W. N., 554

——ss. 580, 631—

See ante, ss. 449, 580 AND 631.

——Sch. XVII, rule 24—

Held that "an open square or the like," to come

CALCUTTA POLICE ACT (BEN. ACT IV OF 1866).

——s. 99 (*1*) and ss. 2, 9, 11, 76 and 77. —*Limitation—Interpretation of Statutes—"Prosecution," meaning of—Inspector detaining persons in custody for police inquiry—Act done or intended to be done under the Act—Circular order issued by Commissioner authorising the Police to investigate, effect of—Practice—Objection to prosecution, on a question of law raised for the first time in appeal, given effect to.*—The word "prosecution" in cl. (*1*) of s 99 of the Calcutta Police Act means "criminal prosecution"; and the clause, so far as the rule of limitation goes, applies to criminal prosecutions as well as to civil action.

a person in custody for the purpose of a police inquiry, and it was not shown that he did so in abuse of his authority and under colour of it for the purpose of harassing or injuring him: *Held* (1) that the circular order was one issued for the purpose of "rendering the police-force efficient in the discharge of all its duties," within the meaning of s 9 of the Calcutta Police Act; (2) that the

MITTER *v* EMPEROR (1903) . 7 C. W. N., 883

CANAL.

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 28 Calc., 693

CANAL DUES.

——recovery of—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.
[I. L. R., 25 All., 527

CANDIDATE.

——for Pleadership or Mukhtarship—

See BOARD OF EXAMINERS
[I. L. R., 28 Calc., 479

CARRIAGE.

See HACKNEY CARRIAGE ACT.

CARRIERS.

See BILL OF LADING. [I. L. R., 26 Bom., 562

See RAILWAY COMPANY.

CASTE.

See JURISDICTION OF CIVIL COURT—CASTE.

See MISCHIEF . I. L. R., 24 All., 155

——abandonment of—

See MADRAS REGULATION, 1816, XI, s 10. [I. L. R., 24 Mad., 271

——marriage between persons of different castes—

See HINDU LAW—MARRIAGE—VALIDITY OR OTHERWISE OF MARRIAGE. [7 C. W. N., 619

CATTLE TRESPASS ACT (I OF 1871).

——s. 22—*Illegal seizure of cattle—Fine on conviction, legality of—Imprisonment in default, if proper—Compensation.*—A magistrate is not competent, under s. 22 of the Cattle Trespass Act, to pass a sentence of fine. He can only award compensation for an illegal seizure of cattle. An order of imprisonment in default of payment of such fine is also illegal. BHAGIRATHI NAIK *v.* GANGADHUR MAHANTI (1900) . . . 5 C. W. N., 32

——s. 24—*Rescue of cattle after seizure for trespassing on public property—Conviction—Omission to record finding as to whether locality was public property—Legality of conviction*—Certain persons had been fined for rescuing cattle [illegible] 24 of the Cattle Trespass Act

CAUSE OF ACTION

See APPEAL—ORDERS—ORDER REJECTING A PLAINT . . 6 C. W. N., 585

See CO-SHARER—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY. [I. L. R., 28 Calc., 223

See DECLARATORY DECREE, SUIT FOR—REMOVING ATTACHMENT [I. L. R., 25 All., 347

See GUARANTEE. [I. L. R., 28 Calc., 597

See JOINDER OF CAUSES OF ACTION

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION

CAUSE OF ACTION—*concluded.*

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 I. L. R., 29 Calc., 315

See LIMITATION ACT, 1877. [I. L. R., 28 Calc., 37

See MULTIFARIOUSNESS. [I. L. R., 29 Calc., 257

See PLAINT—FORM AND CONTENTS OF PLAINT—CAUSE OF ACTION. [6 C. W. N., 585

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See RES JUDICATA—CAUSES OF ACTION.

See RIGHT OF SUIT

See SLANDER I. L. R., 28 Calc., 452

——joinder of—

See RENT, SUIT FOR 5 C. W. N., 880

——misjoinder of—

See DEBTOR AND CREDITOR [I. L. R., 26 Bom., 577

——splitting of—

See CIVIL PROCEDURE CODE, s 43 [I. L. R., 27 Bom., 379

CAUSE PAPERS.

——lien on—

See ATTORNEY AND CLIENT [I. L. R., 29 Calc., 63

CAVEAT

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

CEREMONIES.

See HINDU LAW—
ADOPTION—WHO MAY OR MAY NOT ADOPT, [I. L. R., 28 Calc., 168
MARRIAGE—CEREMONIES

——ceremonial competence—

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT. [I. L. R., 27 Bom, 492

CERTIFICATE.

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—LEAVE TO APPEAL. [5 C. W. N., 659

CERTIFICATE—*concluded.*

——sale in execution of—

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895) [I. L. R., 30 Calc., 619

CERTIFICATE OF ADMINISTRATION.

See APPEAL—CERTIFICATE OF ADMINISTRATION. [I. L. R., 25 Mad., 634

—Act VII of 1889, s. 4, sub-s. (1), cl. (a)—*Suit upon an usufructuary mortgage by the heirs of the deceased mortgagee, whether maintainable without a succession certificate in a case where the mortgagee becomes entitled to a personal decree against the mortgagor on the happening of certain events.*—In a suit by the heirs of a deceased mortgagee upon an usufructuary mortgage, by the terms of which the mortgagee was precluded *from suing for the money,* the Court of first instance gave a personal decree against the mortgagor by reason of the mortgage security having been impaired on the happening of subsequent events. The Lower Appellate Court reversed the decision of the first Court on the ground that, having [illegible]

[illegible]

maintainable UMESH CHANDRA PRAMANICK *v.* MOTHURA MOHAN HALDAR (1901) [I. L. R., 28 Calc., 246; s.c., 5 C. W. N., 607

—Act VII of 1889—*Right to sue without a* [illegible]

[illegible]

the mortgagor, the widows, their assignee and the purchaser of the equity of redemption, to recover the [illegible]

[illegible]

plaintiff was entitled to a decree for the land itself, and it was only by his consent that money was awarded in lieu of the land. The amount could not, therefore, rightly be treated as a debt, within the meaning of the Succession Certificate Act, and the failure of the plaintiff to produce a certificate was no bar to a decree being passed in his favour. ARUMUGAM PILLAI *v.* VALURA KOUNDAN (1900) [I. L. R., 24 Mad., 23

CERTIFICATE OF PUBLIC DEMAND.

See BENGAL TENANCY ACT, s. 107. [I. L. R., 28 Calc., 678

See PENAL CODE, s. 206. [I. L. R., 28 Calc., 217

See PUBLIC DEMANDS RECOVERY ACT. [6 C. W. N., 302

CERTIFICATE OF SALE.

See DEED—CONSTRUCTION. [L. R., 30 I. A., 71

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 30 Calc., 1

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD . . I. L. R., 27 Bom., 334

——amendment of—

See APPEAL—EXECUTION OF DECREES—QUESTIONS IN EXECUTION. [I. L. R., 23 All., 476

—The certificate of sale is not the title; it is merely the title-deed. NARAYAN BHAGWAN GANDHI *v.* SHAMRAO LAXUMAN (1903) [I. L. R., 27 Bom., 379

CESS.

See LAND-REVENUE. [I. L. R., 26 Bom., 504

See MADRAS LOCAL BOARDS ACT, ss. 57, 64, 149 . . I. L. R., 24 Mad., 114

See NORTH-WESTERN PROVINCES LOCAL RATES ACT . I. L. R., 23 All., 505

See ZAMINDARI DAKS. [I. L. R., 28 Calc., 293

——illegal—

See ILLEGAL CESS.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—SUBSTANTIAL INJURY . . . 7 C. W. N., 439

——liability to pay—

See BENGAL CESS ACT, ss. 34, 35, 36, 41. [I. L. R., 28 Calc., 109

1.—Bengal Tenancy Act, 1885, s. 74.—"All impositions upon tenants under the denomination of abwab," etc., and "all stipulations and reservations for the payment of such," referred to in *s. 74* of the Bengal Tenancy Act, relate to both past and future stipulations; such stipulations made before the passing of the Bengal Tenancy Act are therefore void. JOTINDRA MOHAN TAGORE *v.* CHANDRA NATH SAPUI (1902) . . 6 C. W. N., 380

2.—Res judicata—*Illegal cess not objected to in former suit for rent—Bengal Tenancy Act, 1885, s. 74.*—Where, in a suit for rent, the rent

CESS—*concluded.*

[illegible]

in the subsequent suit. *Kailash Mondul v. Baroda Sundari Dasi (1897), I. L. R., 24 Calc., 711,* followed. *Radha Prosad Singh v. Bal Kowar Koeri (1890), I. L. R., 17 Calc., 726,* referred to. WOOMESH CHANDRA MAITRA *v.* BARADA DASS MAITRA (1900) [I. L. R., 28 Calc., 17

CESS ACT.

See BENGAL CESS ACT (BENGAL ACT IX OF 1880).

CHAMBERS.

See RECEIVER I. L. R., 28 Calc., 250

CHARACTER.

See EVIDENCE—CRIMINAL CASES—CHARACTER.

CHARGE.

See ERROR . I. L. R., 29 Calc., 481

See FALSE CHARGE.

See FALSE EVIDENCE—GENERAL CASES [5 C. W. N., 615

See JOINDER OF CHARGES.

See SALE FOR ARREARS OF RENT—INCUMBRANCES . 6 C. W. N., 834

See TRANSFER OF PROPERTY ACT, s. 100 [I. L. R., 24 Mad., 397

——addition of—

See ADULTERY . I. L. R., 29 Calc., 415

——alteration of—

See APPEAL IN CRIMINAL CASE—PRACTICE AND PROCEDURE [I. L. R., 30 Calc., 288

——evidence to be taken after framing—

See CRIMINAL PROCEDURE CODE, s 254 [7 C. W. N., 521

——form of—

See DEFAMATION. [I. L. R., 30 Calc., 402

CHARGE—*continued.*

——form of—(*contd*)

See SESSIONS JUDGE—JURISDICTION OF—ORDER FOR RE-TRIAL ON APPEAL. [7 C. W. N., 301

——necessity for—

See CRIMINAL PROCEEDINGS. [I. L. R., 27 Bom., 394

——statutory—

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF. [L. R., 30 I. A., 238

——subsequent proceedings where two distinct charges framed—

See CRIMINAL PROCEDURE CODE, s 254. [7 C. W. N., 521

1. FORM OF CHARGE.

1.—**False evidence and perjury**—*Offences committed by a person before the Court of Session—Committal of such person by Court of Session for trial before itself—Proceedings to be drawn up on day of committal—Charges of perjury and forgery—Specific statement as to such charges—Code of Criminal Procedure (Act V of 1898), ss. 195 and 477—Penal Code (Act XLV of 1860), ss 193, 466 and 471.*—If a Court of Session proceeds to take action under s 477 of the Code of Criminal Procedure, [illegible]

formulated in the shape of a charge, the Sessions [illegible]

R arrested and committed to jail on charges under ss 193, 466 and 471 of the Penal Code. The 25th of [illegible]

CHARGE—*concluded.*

1. FORM OF CHARGE—*concluded.*

particulars of the statements made and acts done by *R* upon which perjury and forgery were charged against him, and was not in any sense a charge or order of commitment, and was not warranted by law. REILY *v.* KING-EMPEROR (1901)
[I. L. R., 28 Calc., 434; s.c 5 C. W. N., 609

2.—Forgery—*Charges, misjoinder of—Defective charge—Appeal—Trial by jury—Forgery—Using as genuine a forged document—Cheating—Criminal Procedure Code (Act V of 1898), s. 423—Penal Code (Act XLV of 1860), ss 467, 468, 471, 417, 511 and 109—Indian Registration Act (III of 1877), s. 82.*—It was alleged by the

regard to the alleged forgery of the *kabala;* under s 82 of the Registration Act, and ss 467, 109 and s. 471 of the Penal Code with regard to the mortgage-

jury was defective, inasmuch as it did not show

investigated by a jury, the accused should be retried. BIRENDRA LAL BHADURI *v.* EMPEROR (1903)
[I. L. R., 30 Calc., 822; s.c., 7 C. W. N., 639

2. ALTERATION OR AMENDMENT OF CHARGE

3.—Adding new charge at close of case for defence—*Prejudice*—A Sessions Judge is em-

adjournment, does not exercise such a sound and wise discretion. KING-EMPEROR *v.* MATHURA THAKUR (1901) . . . . . **6 C. W. N., 72**

CHARGE TO JURY.

——misdirection—

See CONFESSION—CONFESSIONS TO MAGISTRATE , **I. L. R., 26 Mad., 38**

1. SUMMING UP IN GENERAL CASES.

1.—*Sessions Judge—Jury—Summing up—Defective direction—Contentions placed before the Jury—Judge should not omit pointedly to call attention of the jury to matters of prime importance, especially if they favour the accused*.—A

been discussed by the advocate. EMPEROR *v.* MALGOWDA BASGOWDA (1902)
[I. L. R., 27 Bom., 644

2. MISDIRECTION.

2.—Acquittal—*Verdict and order of acquittal—Appeal against acquittal.*—In a charge, against an Inspector of Salt and Abkari, of extortion

to make the customary present of R100 or R50, according to the amount of salt to be weighed. The witness stated that he had refused to pay the bribe

and the accused agreed to send his peon (who was charged with abetment) for the
peon came to
accountant by
the presence of
two other persons who were in the employment of the witness. The prosecution evidence, if true, only showed that these two other persons had witnessed the transactions without taking any part in it. The accountant and the other two persons were called and gave evidence, as second, third and fourth witnesses respectively, for the prosecution. Some

charge to the jury, warned them against accepting the evidence of accomplices without corroboration in

CHARGE TO JURY—*continued*

2 MISDIRECTION—*continued.*

material particulars He said that the first and

was a misdirection. EMPEROR *v* SMITHER (1902)
[I. L. R., 26 Mad., 1

3.—**Approver's evidence**—*Duty of Judge—Corroboration—Retrial—Criminal Procedure Code (Act V of 1898), ss. 297, 298 and 337.*—A Sessions Judge, in laying the evidence of an approver before the jury, stated in his charge: "If you think that the approver's story is worthy of credit in itself, you have to consider whether it has been corroborated on material points," and then, after describing what in his opinion were "the points of corroboration," told the jury that

crime." *Held* that this was not a proper way to place the case before the jury. The Sessions Judge should have told the jury that, although the law permitted them to convict on the uncorroborated

[I. L. R., 29 Calc., 782; s c, 6 C. W. N, 553

4.—**Inadmissible evidence**—*Sessions Judge—Inadmissible evidence—Criminal Procedure Code (Act V of 1898), ss 418, 423 (2)*—Where a charge to the jury by the Sessions Judge is, upon the whole, favourable to the accused, and most of the points of importance in favour of the

CHARGE TO JURY—*continued.*

2 MISDIRECTION—*concluded.*

sion of it, there is an error in law in the trial under s. 418 of the Criminal Procedure Code (Act V

putting the jury in possession of the inadmissible evidence, the Judge in his charge goes on also to point out circumstances which would justify the jury in disbelieving the wrongly admitted evidence, does not make the misdirection less a misdirection. Where evidence which the law says shall not be admitted is let in with other evidence legally admissible, and

5.—**Explanation of law**—*Duty of Judge to explain law—Law explained in addresses by pleaders on both sides to jury—Criminal Procedure Code (Act V of 1898), ss. 297 and 298—Penal Code (Act XLV of 1860), ss 147, 149, 323, 325 and 304*—Where a Sessions Judge, in charging a jury under s 297 of the Code of Criminal Procedure said. "The accused are charged with offences under ss. 147, 323 with 149, 325 with 149, and 304 with 149 The law bearing on the case has been placed before you more than once in the addresses delivered by the learned pleaders on either side. I need not go into detail as to the law, therefore" *Held* that it was immaterial how much or how often the jury may have been addressed by the pleaders on both sides upon the law The responsibility of laying
dow
enti
by t
on
be s
further that, although the common object of the unlawful assembly is stated in the charge, the Sessions Judge ought, in commenting upon the provisions of s 149 of the Penal Code, to draw the attention of the jury expressly to the common object. MANGAN DAS *v* EMPEROR (1902)
[I. L. R., 29 Calc., 379; s.c., 6 C. W. N., 292

CHARGE TO JURY—*concluded.*

3. SPECIAL CASE.

6.—Stolen property—*Penal Code (Act XLV of 1860), ss. 395, 411—Charges of dacoity and receiving stolen property—Possession of stolen property—Misdirection.*—On the trial of an accused, before a Judge and jury at a Court of Session, for dacoity and receiving stolen property, the Judge, in his charge to the jury, directed them that the fact of a stolen shirt having been found in possession of the accused two months after the dacoity was sufficient to justify them in convicting the accused of the dacoity. *Held,* on appeal, that this was a misdirection. Whether the possession of the stolen property was recent enough to warrant a conviction for the substantive offence was a matter entirely for the jury, and should not have been put to them in the positive way which the Judge adopted. GUZZALA HANUMAN v EMPEROR (1902)
[I. L. R., 26 Mad., 467

CHARITABLE BEQUEST.

See WILL—CONSTRUCTION.
[6 C. W. N., 321
I. L. R., 26 Bom., 632
„ 26 Mad., 532

CHARITABLE TRUST.

See MAHOMEDAN LAW—ENDOWMENT.

CHARITIES.

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

CHARTER ACT.

See HIGH COURTS' CHARTER ACT.

CHAUKIDAR.

See ESCAPE FROM CUSTODY.
[6 C. W. N., 337

CHEATING.

See FORGERY . I. L. R., 25 Mad., 726

See FORM OF CHARGE—SPECIAL CASES—FORGERY . I. L. R., 30 Calc., 822

—*Indian Penal Code (Act XLV of 1860), s. 415—Including in a bill an article not supplied—Payment of the bill in part—Intention to defraud.*—The fact that a trader, in a statement of his account, included, amongst other articles delivered, an article which the complainant alleged she had returned, does not amount to cheating unless it is proved that he had intentionally done so with an intention to defraud, and had obtained

CHEATING—*concluded.*

a payment of the whole bill or of the bill in part including the price of that article. BAIJ NATH RAM MARWARI v. BURGESS (1900)
[5 C. W. N., 255

CHEQUE.

——entry of, in pass-book—

See BANKER AND CUSTOMER.
[I. L. R., 25 Bom., 499

CHIEF PRESIDENCY MAGISTRATE.

See DISCHARGE OF ACCUSED.
[7 C. W. N., 527

CHILD.

——paternity of—

See EVIDENCE ACT, s 112.
[I. L. R., 29 Calc., 111

CHILDREN.

See ABANDONMENT OF CHILDREN.

See HINDU LAW—INHERITANCE—CHILDREN BY DIFFERENT WIVES.

See ILLEGITIMATE CHILDREN

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R., 25 All., 165

CHOSE IN ACTION.

See ASSIGNMENT OF CHOSE IN ACTION

See INSOLVENT DEBTORS ACT, s 23.
[I. L. R., 25 Mad., 406

CHOTA NAGPUR ENCUMBERED ESTATES ACT (VI OF 1876).

——s. 16—

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS . I. L. R., 28 Calc., 171

CHOWKIDAR.

See CHAUKIDAR.

CHUDASAMA GAMETI GARASIAS.

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT.
[I. L. R., 27 Bom., 492

CITATION.

See PRACTICE—CIVIL CASES—PROBATE.
[I. L. R., 30 Calc., 528

CIVIL COURT.

See JURISDICTION OF CIVIL COURT.

CIVIL COURT—*concluded.*

——duty of Magistrate to uphold decision of—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION . 7 C.W. N., 118

CIVIL PROCEDURE CODE.

——s. 2: "decree," definition of—

See APPEAL—
DECREES; I. L. R., 28 Calc., 81
ORDERS I. L. R., 24 All., 342

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 29 Calc., 60

1.—An order determining any question referred to in s 244, Civil Procedure Code, is a decree under s. 12 of that Code. KHIRODE SUNDARI DEBI v. JNANENDRA NATH PAL CHAUDHURI (1901)
[6 C. W. N., 283

2.—*Civil Procedure Code (Act XIV of 1882), ss. 2, 211—Mesne profits—Future mesne profits.*—*Held* by the Full Bench (PRINSEP, J., dissenting) that an order dismissing, for default, an appeal from a decree is a 'decree' within the meaning of s 2 of the Code of Civil Procedure *Jagarnath Singh v. Budhan (1895), I. L. R., 23 Calc., 115*, and *Anwar Ali v. Jaffer Ali (1896), I. L. R, 23 Calc, 827*, overruled. *Ramchandra Pandurang Naik v. Madhav Purushottam Naik (1891), I. L. R, 16 Bom, 23*, referred to. RADHA NATH SINGH v. CHANDI CHARAN SINGH (1903)
[I. L. R., 30 Calc., 660; s.c., 7 C. W. N., 486

——s. 2: "district," definition of (second part)—

See APPEAL—ORDERS.
[I. L. R., 23 All., 56

——s. 2: "foreign Court"—

See FOREIGN COURT, JUDGMENT OF.
[I. L R., 29 Calc., 509

——s. 2: "public officer"—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY
[I. L. R., 25 Mad., 402

See PUBLIC OFFICER.
[I. L R., 26 Bom., 809

——s. 11—

See BENGAL TENANCY ACT, ss 101 TO 111A.
[I. L. R., 28 Calc., 28

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
[I. L. R., 30 Calc., 369

See JURISDICTION OF CIVIL COURT—CASTE . I. L. R., 26 Bom., 174

See RIGHT OF SUIT.

CIVIL PROCEDURE CODE—*continued.*

——s. 12—

See BENGAL TENANCY ACT, ss. 101 to 111A.
[I. L. R., 28 Calc., 28

See RENT, SUIT FOR . 7 C. W. N., 720

——s. 13—

See BENGAL TENANCY ACT, s. 51.
[6 C. W. N., 589

See ESTOPPEL—ESTOPPEL BY JUDGMENT.
[I. L. R., 28 Calc., 318

See RES JUDICATA.

See RIGHT OF SUIT—FRAUD.
[I. L. R., 29 Calc., 395

——s. 13, Explanation VI—

See FOREIGN COURT, JUDGMENT OF.
[I. L. R., 28 Calc., 641

——s. 15—

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . I. L. R., 30 Calc., 453

——ss. 16, 16A—

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 . I. L. R., 24 Mad., 293

——s. 17—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
[I. L. R., 30 Calc., 369

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—

BREACH OF CONTRACT;
[7 C. W. N., 912

COMPROMISE;
[I. L. R., 25 All., 48

PRINCIPAL AND AGENT.
[I. L. R., 26 Mad., 544

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 . I. L. R., 24 Mad., 293

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . I. L. R., 30 Calc., 453

See RIGHT OF SUIT—FRAUD.
[7 C. W. N., 353

——s. 17, Expln. III—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—GENERAL CASES I. L. R., 25 Bom., 528

——s. 25—

See TRANSFER OF CIVIL CASE—GENERAL CASES.
[I. L. R., 24 All., 304, 356
" 25 All., 183
" 26 Mad., 595

CIVIL PROCEDURE CODE—*continued.*

——s. 26—

See MISJOINDER.
[I. L. R., 26 Bom., 259
" 26 Mad., 647

——s. 27—

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS.
[I. L. R., 27 Bom., 157

See TRADE MARK.
[I. L. R., 25 Bom., 433

——s. 28—

See MISJOINDER.
[I. L. R., 26 Bom., 259

See MULTIFARIOUSNESS
[I. L. R., 29 Calc., 257

See PLAINT—FORM AND CONTENTS OF PLAINT—CAUSE OF ACTION.
[6 C. W. N., 585

——s. 30—

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
[I. L. R., 25 Mad., 399

See RIGHT TO USE OF WATER
[I. L. R., 29 Calc., 100

——misjoinder of causes of action—

See DEBTOR AND CREDITOR
[I. L. R., 26 Bom., 577

——s. 31—

See MISJOINDER [I. L. R., 24 All., 358

See TRADE MARK.
[I. L. R., 25 Bom., 433

——s. 32—

See DIVORCE ACT (IV OF 1869), ss. 7, 11, 45 . I. L. R., 30 Calc., 459, 490n

See LAND ACQUISITION ACT (I OF 1894), ss 30 AND 53 I. L. R., 25 All., 133

See PARTIES—

PARTIES TO SUITS—LEGACY, SUIT FOR, I. L. R., 26 Bom., 301

SUBSTITUTION OF PARTIES—DEFENDANTS . 7 C. W. N., 529

See TRADE MARK.
[I. L. R., 25 Bom., 433

——s. 33—

See LIMITATION ACT, 1877, s. 22.
[6 C. W. N., 218

——s. 34—

See PARTIES—PARTIES TO SUITS—LEGACY, SUIT FOR
[I. L. R., 26 Bom., 301

CIVIL PROCEDURE CODE—*continued.*

——ss. 36, 37—

See LIMITATION ACT, 1877, SCH. II, ART. 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS.
[I. L. R., 23 All., 499

——s. 39—

See PLEADER—APPOINTMENT AND APPEARANCE . . . 5 C. W. N., 816

——s. 40—

See COMMISSION—CIVIL CASES.
[6 C. W. N., 927

——s. 42—

See RES JUDICATA—MATTERS IN ISSUE
[I. L. R., 26 Mad., 760

——s. 43—

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See RES JUDICATA—MATTERS IN ISSUE.
[I. L. R., 26 Mad., 760

See SPECIFIC RELIEF ACT, s 9.
[I. L. R., 24 All., 501

—*Cause of action—Splitting of cause of action—Suit to recover exclusive possession of land—Suit to obtain a share by partition of land—Certificate of sale relied upon in both suits*—The plaintiff, in execution of a decree obtained by him, purchased at a Court-sale the right, title and interest of his judgment-debtors, Rajaram and Sitaram, in certain lands; and, on the 12th November, 1886, he obtained a sale certificate in respect of all the properties so purchased. In 1891 he brought a suit (No. 519 of 1891) against the heirs of Sitaram, then deceased, for possession of certain of the lands included in the sale certificate, of which they were in exclusive possession, and he obtained a decree. In [illegible]

exclusive possession, and he again obtained a decree In both the above suits he based his claim on the sale certificate showing his title as purchaser. The [illegible]

filed this suit to recover by partition the shares of the heirs of Rajaram and of Sitaram in these lands, basing his claim upon the sale certificate. The [illegible]

[illegible] remanding the case, that the suit was not barred by s 43. That section does not apply where the

CIVIL PROCEDURE CODE—*continued.*

——s. 43—*concluded.*

cause of action is different. The title on which the former suits were based was exclusive ownership, while that on which the present suit was based was joint ownership A person who has succeeded in re-

[illegible]

——s. 44—

See JOINDER OF CAUSES OF ACTION.
[7 C. W. N., 353
I. L. R., 21 All., 358
„ 25 All., 229

——s. 45—

See MULTIFARIOUSNESS.
[I. L. R., 29 Calc., 257

See RENT, SUIT FOR 5 C. W. N., 880

——s. 48—

See LIMITATION ACT, 1877, s 4.
[I. L. R., 27 Bom., 330

——s. 50—

See PLAINT—
FORM AND CONTENTS OF PLAINT—*CAUSE OF ACTION*;
[6 C. W. N., 585

AMENDMENT OF PLAINT
[I. L. R., 30 Calc., 699

——s. 53—

See APPELLATE COURT—
EXERCISE OF POWERS—SPECIAL CASES—PLAINT, AMENDMENT OF,
[5 C. W. N., 273

INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT
[I. L. R., 30 Calc., 516

See PLAINT—

AMENDMENT OF PLAINT;

REJECTION OF PLAINT.

——s. 54—

See post, s 424 . I. L. R., 25 All., 187

See LIMITATION ACT, 1877, s 4
[I. L. R., 27 Bom., 330

See PLAINT—REJECTION OF PLAINT

——s. 80—

See SUMMONS, SERVICE OF.
[I. L. R., 24 All., 302

——s. 89—

See SUMMONS, SERVICE OF.
[I. L. R., 23 All., 99

CIVIL PROCEDURE CODE—*continued.*

——s. 99—

—*Practice—Costs—Appeal from order as to costs—Dismissal of suit for non-appearance—Restoration of suit to file an application of plaintiff—Order that plaintiff should pay the general costs of suit*—A Judge, when restoring a suit to the file under s 99 of the Civil Procedure Code (Act XIV of 1882), has no jurisdiction to pass at that time any order as to the general costs of the suit KRISHNA VITHAL POOLE *v.* GANESH BHASKAR TILAK (1901)
[I. L. R., 26 Bom., 201

——s. 100—

—*Service of summons on defendant residing out of British India*—S 100 of the Code of Civil Procedure is not limited in its application to defendants residing within British India. FAKHR-UD-DIN *v.* GHAFUR-UD-DIN (1900) . I. L. R., 23 All., 99

——s. 101—

See post, s 108 . 6 C. W. N., 109

——ss 103 and 108—

—*Civil Procedure Code (Act XIV of 1882), ss 103, 108 and 558—Application to restore—Prevention by sufficient cause from appearing—Power of Court to restore where sufficient cause not shown*—The affirmative provisions in ss 103, 108 and 558 of the Code of Civil Procedure, that a plaintiff or appellant (as the case may be) may prove that he was "prevented by sufficient

[illegible]

whereas in other cases the merits of the applicant's case will form an important element for consideration when the Court is asked to exercise its discretion SOMAYYA *v.* SUBBAMMA (1903)
[I. L. R., 26 Mad., 599

——s. 104—

See APPEAL—EX-PARTE CASES.
[I. L. R., 23 All., 99

——s. 108—

See ante, ss. 103 AND 108.

See APPEAL—EX-PARTE CASES.
[5 C. W. N., 153
I. L. R., 24 All., 302
„ 25 All., 280

See RIGHT OF SUIT—
DECREES; I. L. R., 28 Calc., 475

FRAUD. I. L. R., 29 Calc., 395

1.—Death of judgment-debtor—*Application by judgment-debtor to have the ex-parte decree set*

CIVIL PROCEDURE CODE—*continued.*

——s. 108—*continued.*

2.—Different defendants—*Ex parte decree*

defendant had executed a promissory note in plaintiff's favour Plaintiff now sued first defendant on

against both. Later, the second defendant alone applied under s 108 of the Code of Civil Procedure that the *ex parte* decree might be set aside.

should be restored as against first defendant; what-

case like this, where the defence of the second defendant was peculiar to him. *Mahomed Hamidula* v. *Tohurenissa Bibi, I. L. R., 25 Calc., 155,* commented on. GOPALA CHETTI *v.* SUBBIER (1903)

[I. L. R., 26 Mad., 604

3.——————*Civil Procedure Code (Act XIV of 1882), s. 101—Ex parte decree, setting aside of, when divisible—Binding effect of such decree against two sets of defendants having a separate defence—Appeal.*—When an *ex parte* decree is divisible, it is, though in form a single decree, equi-

reference to *A* was decreed

against *B* and the other against *A*, and it remained a good and binding decree as against *B*; also that *B* was

CIVIL PROCEDURE CODE—*continued.*

——s. 108—*continued.*

no party to the re-hearing, and the first Court had no jurisdiction to retry the case as against him, and the appeal as against that decree to the lower Appellate Court was not competent. MOHIM CHANDRA GUHA *v.* ANNADA CHARAN DUTT (1901) . 6 C. W. N., 109

4.——————*Sufficient cause—Non-appearance of a guardian of a minor in a suit, whether a good and sufficient cause—Ex parte decree, setting aside of, against one of several defendants, effect of, as to the decree against other defendants.*—The simple fact that a guardian did not appear in a suit is not a good and sufficient cause,

(1880), 6 C. L. R., 69, explained. In a case where an *ex parte* decree was set aside against one of the defendants, and the Subordinate Judge set aside the decree against others who did not appear and one of whom made an application to set aside the *ex parte* decree: *Held* that this was rightly done. *Mahomed Hamidulla* v. *Tohurennissa (1897), I. L. R., 25 Calc., 155,* approved of. AJODHYA PERSHAD SINGH *v.* SHEO PERSHAD SAHU (1900) . 5 C. W. N., 58

5.—Different judgment-debtors—*Decree ex parte*

for an order absolute for sale, the Court, under these circumstances, directed that an order absolute under s. 89 of the Transfer of Property Act (IV of 1882) should issue, for the sale of all the mortgaged property,

SHAIDA HUSAIN *v.* HUB HUSAIN (1902)

[I. L. R., 25 All., 42

6.—Minor defendant—*Civil Procedure Code, ss 108, 443—Guardian ad litem—Minor defendant not properly represented—Ex parte decree against minor—Application to set aside decree—How far the granting of such application should affect parties other than the applicant.*—A suit claiming payment of money alleged by the plaintiffs to be due

CIVIL PROCEDURE CODE—*continued.*

——s. 108—*continued.*

on a balance of account was filed against three defendants, *viz*, Bhura Mal, Musammat Gayatri, the daughter-in-law, and Jamna Das, the son of Bhura Mal. The second and third defendants being minors, Bhura Mal was named as their guardian, and a notice was issued to him under Rule 128 of the Rules of Court, calling upon him to state whether he was willing to act as guardian *ad litem* to the minor defendants; Bhura Mal was also duly served with a summons in the suit. Bhura Mal entered no appearance, but the Court nevertheless, though no order had be[illegible] *litem* [illegible] suit. [illegible] and t[illegible] all th[illegible] out b[illegible] behalf of the minor defendants under s. 108 of the Code of Civil Procedure to set aside the decree. [illegible]

[illegible] though, where a decree passed against several defendants consists in reality of separate decrees against each, it may be that the decree can be set aside in [illegible]

[illegible] Civil Procedure primarily applies so far only as the particular defendant, who seeks to get an *ex parte* decree against him set aside, is concerned. *Huro* [illegible]

CIVIL PROCEDURE CODE—*continued.*

——s. 108—*concluded.*

Ghose v. *Greeshchunder Bose (1864), 1 W. R., C. R., 222; Brojonath Sarma Chuckerbutty* v. *Anund* [illegible]

(1902) . . . . I. L. R., 24 All., 383

——s. 111, Ill. (*d*)—

See SET-OFF—GENERALLY.
[I. L. R., 30 Calc., 1066

——s. 120—

See PRACTICE—CIVIL CASES—NON-APPEARANCE OF PLAINTIFF.
[I. L. R., 26 Bom., 392

——s. 130—

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.
[I. L. R., 28 Calc., 424

——ss. 141A, 142A—

See STAMP ACT (II OF 1899), SCH. I, ART 21 . I. L. R., 26 Bom., 522

——s. 146—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION
[7 C. W. N., 481

——s. 153—

—Joint debtors—Suit against several joint debtors—Judgment against one joint debtor who admits claim does not bar suit against others—Contract Act (IX of 1872), s 43—Partners—Practice—Procedure—In an action against two alleged partners, which came on as a short cause, one of the defendants admitted the claim, and judgment was therefore passed against him for the amount claimed. The second defendant denied his [illegible]

[illegible] action alleged in the plaint was joint; that it had become merged in the judgment recovered against the first defendant, and that further proceedings in the suit were therefore barred. A preliminary issue on this point was raised and argued. *Held* that the suit should proceed. In an action commenced against several joint debtors, judgment recovered against one of them who admits the claim does not bar the further prosecution of the suit against the others. DICK v. DHUNJI JAITHA (1901)
[I. L. R., 25 Bom., 378

——ss. 157, 158—

See APPEAL—DEFAULT IN APPEARANCE.
[I. L. R., 25 All., 194

CIVIL PROCEDURE CODE—*continued.*

—s. 158—

necessary to the decision of the suit If an order of this kind is not complied with, it is the duty of the Court to go on and decide the suit on such materials as it has before it. SITARA BEGAM *v.* TULSHI SINGH (1901) . . . I. L. R., 23 All., 462

—s. 162—

See WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES [I. L. R., 24 Mad., 200

—s. 191—

See TRANSFER OF CIVIL CASE—GENERAL CASES . . I. L. R., 26 Mad., 595

—s. 206—

See APPEAL—ORDERS. [I. L. R., 28 Calc., 177

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . I. L. R., 30 Calc, 679

See DECREE—ALTERATION OR AMENDMENT OF DECREE. [7 C. W. N., 880; I. L. R., 24 Mad., 25, 646

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [5 C. W. N., 192

—s. 209—

See INTEREST—MISCELLANEOUS CASES—MORTGAGE . . 6 C. W. N., 769

—s. 211—

See INTEREST—MISCELLANEOUS CASES—MESNE PROFITS. [I. L. R., 30 Calc., 506

See MESNE PROFITS—

RIGHT TO, AND LIABILITY FOR; [I. L. R., 24 All., 376

ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS; [6 C. W. N., 672

MODE OF ASSESSMENT AND CALCULATION. [6 C. W. N., 732 I. L. R., 23 All., 252

See ONUS OF PROOF—MESNE PROFITS [5 C. W. N., 720

—s. 220—

See COSTS—SPECIAL CASES—DIVORCE [I. L. R., 28 Calc., 84

CIVIL PROCEDURE CODE—*continued.*

—s. 223—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION. [5 C. W. N., 150 I. L. R., 28 Calc., 238 „ 26 Mad., 258

—s. 229A—

See TRIBUTARY MAHALS OF ORISSA. [6 C. W. N., 573

—ss. 229A, 229B—

See EXECUTION OF DECREE—FOREIGN COURT . . I. L. R., 29 Calc., 400

—s. 230—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT . . I. L. R., 25 All., 541

—*Commencement of period of limitation under s. 230(a), Civil Procedure Code, for application to execute portion of decree not appealed against.*—In the case of a decree for the payment of money or the delivery of property, the period of limitation for an application to execute a portion of the decree which has not been appealed against runs, under s 230(a) of the Code of Civil Procedure, from the [illegible]

—s. 231—

See LIMITATION ACT, 1877, ss 7 AND 8, AND SCH II, ART. 179 [I. L. R., 25 Mad., 431

—s. 232—

See LIMITATION ACT, 1877, SCH. II, ART. 180 . . . 7 C. W. N., 793. [I. L. R., 30 Calc., 979

1.—**Assignment of decree**—*Order refusing to recognize transferee of decree—Appeal.*—An order passed under s 232 of the Civil Procedure Code, refusing to recognize the transferee of a decree, [illegible]

v. CHIDAMBARAM ASARI (1901) [I. L. R., 25 Mad., 383

2.——————*Decree, transmission of—Execution—Assignee of Decree—Notice*—In an application, by an assignee of a decree, for transmission of the decree and for notice to issue under s 232 of Civil Procedure Code: *Held* that such application can only be treated as one for execution. NANDO LAL *v.* CHUTTERPUT SING (1902) . . . I. L. R., 29 Calc., 235

3.—**Transfer of decree for execution**—*Execution of decree—Civil Procedure Code, ss. 232 and 295—Sale of decree, and transfer for execution to another Court—Application by trans-*

CIVIL PROCEDURE CODE—*continued.*

——s. 232—*concluded.*

ferees for rateable distribution of assets—Court to which such application should be made.—A decree was transferred for execution from Mirzapur

appearance, and no objections were filed. As the

execution to that Court; and (3) that the order

——s. 233—

See SET-OFF—CROSS-DECREES.
[I. L. R., 26 Mad., 428

——s. 234—

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES
[6 C. W. N., 223
I. L. R., 26 Bom., 283
" 30 Calc., 961

See REPRESENTATIVE OF DECEASED PERSON . I. L. R., 30 Calc., 1044

——s. 244.

	Col.
1. QUESTIONS IN EXECUTION OF DECREE	163
2 PARTIES TO SUIT	169

——

See ante, s 232 . I. L. R., 25 Mad., 383

See APPEAL—

EXECUTION OF DECREES;

SALE IN EXECUTION OF DECREE
[I. L. R., 28 Calc, 73

See ASSIGNMENT OF CHOSE IN ACTION
[I. L. R., 26 Mad., 264

See BENGAL TENANCY ACT, s 13.
[6 C. W. N., 190
7 C. W. N., 591

CIVIL PROCEDURE CODE—*continued.*

——s. 244—*continued.*

See CLAIM TO ATTACHED PROPERTY.
[6 C. W. N., 63

See COMPROMISE—CONSTRUCTION, ETC, OF DEEDS OF COMPROMISE
[7 C. W. N., 158

See EXECUTION OF DECREE—

APPLICATION FOR EXECUTION, AND POWERS OF COURT;
[I. L. R., 25 Mad., 537

EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES;
[I. L. R., 29 Calc., 810
" 24 Mad., 265

EXECUTION BY AND AGAINST REPRESENTATIVES;
[6 C. W. N., 223

STAY OF EXECUTION.
[I. L. R., 28 Calc., 734

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.
[6 C. W. N., 663

See MESNE PROFITS—ASSESSMENT IN EXECUTION . . . 6 C. W. N., 672
[I. L. R., 29 Calc., 622

See MORTGAGE—FORECLOSURE—RIGHT TO FORECLOSURE
[I. L. R., 24 All., 179

See POSSESSION—SUITS FOR POSSESSION
[7 C. W. N., 607

See PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT I OF 1895), ss 10, 17, 21.
[I. L. R, 28 Calc., 813

See RES JUDICATA—

ESTOPPEL BY JUDGMENT;
[I. L. R., 24 All., 44

ADJUDICATIONS.
[I. L. R., 25 Mad., 300

See RIGHT OF SUIT—DECREES
[5 C. W. N., 559

See SALE IN EXECUTION OF DECREE—

INVALID SALES—FRAUD;
[5 C. W. N., 265

SETTING ASIDE SALE—GENERAL CASES;
[I. L. R., 25 Bom., 631

SETTING ASIDE SALE—IRREGULARITY . I. L. R., 30 Calc., 142

See SPECIAL OR SECOND APPEAL.
[I. L. R., 28 Calc., 116

See TRANSFER OF PROPERTY ACT, ss. 88 AND 89 . I. L. R., 25 Mad., 244

——parties to suit—

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.
[I. L. R., 24 Mad., 683

CIVIL PROCEDURE CODE—*continued.*

—s. 244—*continued.*

—parties to suit—*concluded.*

See Insolvent Act (11 and 12 Vic., c. 21) . . I. L. R., 28 Calc., 419

See Sale in Execution of Decree—Setting aside Sale—
General Cases; I. L. R., 29 Calc., 682
Irregularity. I. L. R., 30 Calc., 142

1. QUESTIONS IN EXECUTION OF DECREE.

1.—Application of section.—S. 224, Civil Procedure Code, does not apply to the case of execu- [illegible] 'ublic Demands [illegible] v. *Mosahohali* [illegible] *Janki Das* v. [illegible] *N.*, *331*, relied upon. Rambup Sahay v. Khushal Misser (1902) [6 C. W. N., 630

2.—Adjustment of decree—*Adjustment of decree, not out of Court, but by another decree superseding the earlier one, effect of.*—If a decree is adjusted by compromise out of Court, the adjustment has to be notified to the Court; and, if it is not so notified, it would be ineffectual; but an adjustment of a decree, effected not out of Court [illegible]

[illegible] C. W. N., 54

3.—Compromise—*Sale in execution of decree—Suit to set aside compromise and sale.*—In execution of a money decree, the decree-holders attached and brought to sale the interest of their [illegible]

[illegible] entered into a compromise [illegible]

[illegible] s. 244 of the Code of Civil Procedure. *Prosunno Coomar Sanyal* v. *Kasi Das Sanyal (1892), L. R., 19 I. A., 166,* referred to. Adhar Singh v. Sheo Prasad (1898) . I. L. R., 23 All., 209

4. [illegible]

CIVIL PROCEDURE CODE—*continued.*

—s. 244—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE—*continued.*

a suit, in derogation of a decree which may be passed in future, cannot form the subject of an inquiry [illegible]

[illegible] tions under s. 244, cl. (*c*), relating to the execution of a decree and arising between the parties to a suit in which the decree was passed or their representatives, must be such as have reference to matters arising subsequent to the passing of the decree, and not antecedent to it. Chhoti Narain Singh v. Rameshwar Koer (1902) 6 C. W. N., 796

5.—Fraud [illegible]

[illegible] (1900) I. L. R., 28 Calc., 4; s.c. 5 C. W. N., 124

6.—————*Auction-purchaser.*—When a [illegible]

[illegible] an application to set aside a sale comes within the scope of s. 244, Civil Procedure Code, or not, the point to be considered is, whether there is a contest [illegible]

[illegible] 403, *Ramasuinga* v. *Arnapatra (1895), I. L. R., 18 Mad., 436*, and *Nemai Chand Kanji* v. *Deno Nath Kanji (1898), 2 C. W. N., 691,* referred to. Adhar Mani Dassi v. Monmotha Nath Bose (1901) . . . . . 6 C. W. N., 279

7.—————*Fraud by decree-holder—Confirmation of sale.*—A judgment-debtor is entitled, by an application under s. 244, Civil [illegible]

CIVIL PROCEDURE CODE—*continued.*

——s. 244—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE—*continued.*

is a stranger to the suit. *Prosunno Kumar Sanyal*

8. ———— *Execution of decree—Suit for cancellation on the ground of fraud in a sale held in execution of a decree—Proper remedy*

9.—Improvements—*Execution proceedings—Question raised as to whether improvements attached in execution were property of deceased judgment-debtor or of his representatives in their*

10.—Leave to bid at sale—*Civil Procedure Code, ss. 244, 294—Procedure—Suit to set aside sale in execution on the ground that the real purchasers were the decree-holders who had not obtained leave to bid—Proper remedy by application*—The plaintiff sued to set aside a sale of certain property in execution of a decree against him, on the grounds that the sale-proceedings had been secretly brought about without the knowledge of the plaintiff, and that the certified auction purchasers were benamidars for the decree-holders, who had not obtained permission to purchase. *Held* that, under the above circumstances, the plaintiff's remedy was not by suit, but by application under s. 244 and the last clause of s. 294 of the Code of Civil Procedure *Viraraghava Ayyangar* v *Venkatacharyar (1882), I. L. R., 5 Mad. 217*;

11.—Mistake—*Civil Procedure Code (Act XIV*

execution proceedings to be re-opened was maintainable under s 244, Civil Procedure Code, on the ground that the decree-holder had acted under a mistake of calculation in fixing the amount that was due *Fakaruddin Mahomed Ahsan* v. *The Official Trustee of Bengal (1884), I. L. R, 10* Where such an applica-

CHATTERJI (1901)

12.—Mortgage—*Purchase of mortgaged property by mortgagee—Application by purchaser to recover possession as against defendants who held possession under prior sale based on prior mortgage—Question raised whether purchaser could recover possession without first paying to defendants amount of prior mortgage—"Execution and enforcement of decree"—Appeal*—A mortgagee obtained a decree directing the sale of property in the possession of certain defendants, subject to a prior charge thereon At the sale in execution of that decree, the mortgagee purchased the property. He now sought to recover possession of it from the defendants, the question raised being whether,

CIVIL PROCEDURE CODE—*continued.*

——s. 244—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE—*continued.*

under the terms of the decree, he was entitled to be put into possession without paying the amount of the prior charge, the defendants so dispossessed being at liberty to bring a separate suit to enforce the charge. *Held* that the question thus raised between the decree-holder (purchaser) and the defendants related, within the meaning of s 244 (*c*) of the Civil Procedure Code, to the execution or enforcement of the decree against these defendants, and an appeal lay from an order passed thereon. *Per* MOORE, *J.*—Even if the purchaser had not been also the decree-holder, he would have been a representative of a judgment-debtor. *Per* BHASHYAM AYYANGAR, *J.*—The order was not the less an order under s. 244, because it was also passed under ss 318 and 334 of the Code. KASINATHA AYYAR *v.* UTHUMANSA ROWTHAN (1901)

[I. L. R., 25 Mad., 529

[illegible] ro- [illegible] re- [illegible] of mortgaged property has been made, any question that arises afterwards as to that order absolute is not [illegible]

14.——————*Civil Procedure Code (Act XIV of 1882), ss. 244, 258—Decree—Order—Appeal—Mortgage decree, question regarding satisfaction of, when no application for execution pending.*—Where a Court deals with a question relating to the discharge or satisfaction of a decree, it may be said to be executing the decree in the sense of s. 244, Civil Procedure Code, although no formal application for execution may have been made to it; and an order passed by the Court is a decree, and is appealable. RAM KAMLESSURI PERSHAD SINGH *v.* SUKHAN SINGH (1902)

[7 C. W. N., 172

15.—Parties—*Execution of decree—Party to suit in which the decree was passed—Party against whom no decree was passed not precluded from bringing a suit.*—S 244 of the Code of Civil Procedure presupposes a decree enforceable by the decree-holder against the person between whom and the decree-holder the question referred to therein arises It has no application to questions arising between the decree-holder and persons against whom there is no decree to be executed. Where therefore certain persons had intervened in a suit as defendants, and the suit was disposed of without any decision of the claim set up by them, and without any decree being passed affecting them, it was *held* that they (or their assignee) were not precluded from bringing a suit to have released from attachment the property claimed by them in the former suit, but as to their title to which there had been no adjudication. *Chowdhry Wahed Ali* v. *Jumaee (1872), 11 B. L. R., P. C, 149,* followed. *Nagamuthu* v. *Savarimuthu (1891), I. L R, 15 Mad, 226; Gour Kishore Chowdhry* v. *Mahomed Hassim Chowdhry (1868), 10 W. R, C. R, 191; Kameshwar Pershad* v. *Run Bahadur Singh (1886), I. L R., 12 Calc., 458; Mashi-ullah* v. *Kifayti, Weekly Notes, 1893, 67; Jangi Nath* v. *Phundo (1888), I. L. R., 11 All., 74;* and *Mukarab Husain* v. *Hurmat-un-nissa* [illegible]

and *Gadicherla China Seetayya* v. *Gadicherla Seetayya (1897), I L R, 21 Ma., 45,* referred to. KALKA PRASAD *v.* BASANT RAM (1901)

[I. L. R., 23 All., 346

16.—Recovery of land—*Proceedings taken by a purchaser under s. 318, relating to the discharge or satisfaction of decree—Subsequent pro-* [illegible]

application was rejected as being barred by limitation. He now brought the present suit to recover possession of the land from the present defendant, [illegible]

[I. L. R., 26 Mad., 10]

17.—Recovery of money—*Execution of decree—Question relating to the execution, discharge or satisfaction of the decree—Application* [illegible]

between the parties after the decree has been executed [illegible]

CIVIL PROCEDURE CODE—*continued.*

——s. 244—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE—*concluded.*

L. R., 7 All., 641, distinguished. COLLECTOR OF JAUNPUR *v.* BITHAL DAS (1902)
[I. L. R., 24 All., 291

18. —————— *Execution of decree—Application to recover money realized in execution of a decree subsequently set aside.*—In executio
holders
R1,3(0.
s. 103 o
decree se
missed,
aside.

remedy was that which he had sought, namely, by application in execution, and not by separate suit. *Dhan Kunwar* v. *Mahtab Singh (1899), I. L. R., 22 All., 79,* followed. SARAN *v.* BHAGWAN (1903)
[I. L. R., 25 All., 441

19.—Release of property—*Malabar law—Suit against karnavan as manager of tarwad—Attachment of tarwad property under decree—Subsequent order of release—Suit to cancel order of release barred by s. 244 of Civil Procedure Code.*—Plaintiff in a suit obtained a decree against the karnavan of defendants, as senior member and

2. PARTIES TO SUIT

20.—Defendants exempted from decree—*Appeal—Civil Procedure Code (Act XIV of 1882), ss. 244, cl. (c), 278, 280, 283—Execution of decree—Defendants exempted from decree—Questions relating to execution, discharge or satisfaction of decree—Claim or objection to*

21.—Party suit against whom was dismissed—*Civil Procedure Code (Act XIV of 1882), ss. 244, 278, 280, 283—Parties—Party against whom a suit is dismissed preferring a*

CIVIL PROCEDURE CODE—*continued.*

——s. 244—*continued.*

2. PARTIES TO SUIT—*continued.*

claim—Claim—Attachment—Right of suit.—When a suit is dismissed against one of the parties but decreed against the rest, that party cannot be regarded as a party to the suit in relation to the execution, discharge or satisfaction of the decree, within the meaning of s. 244, Civil Procedure Code. So when a party against whom a suit is dismissed prefers a claim to property which is attached by the decree-holder as being the property of the defendant against whom the suit has been decreed: *Held* that ss. 278 and 280, and not s. 244, Civil Procedure Code, apply to the case. *Panchanun Bandopadhya* v. *Rabia Bibi (1890), I. L. R., 17 Calc., 711, Ram Prosad Pandey* v. *Jagannath Ram Marwari (1901), 6 C. W. N., 10, Kameshwar Pershad* v. *Run Bahadur Singh (1886), I. L. R., 12 Calc., 458, Kalka Prasad* v. *Basant Ram (1901), I. L. R., 23 All., 346,* referred to. KAHIMUDDIN SARKAR *v.* LALL MEAH (1902)
[6 C. W. N., 727 :
s.c., I. L. R., 29 Calc., 696

22.—Purchaser—*Civil Procedure Code, ss. 244, 305—Execution of decree—Representative of a party to the suit—Purchaser under a private sale sanctioned by the Court under s. 305.*—*Held* that a purchaser from a voluntary seller who has sold with the consent and authority of the Court under

23. —————— *Civil Procedure Code (Act XIV of 1882), ss. 244, 310A—Purchaser of interest in a tenure from the judgment-debtor, whether a legal representative—Purchase prior to decree—Rent decree.*—When a person pur-

24. —————— *Purchasers at a private sale, of interests of mortgagors—Locus standi of such purchasers to make application under s. 244—Representative of parties to suit—Annulment of possession—Confirmation of possession of such purchasers.*—The purchasers at a private sale of the interests of the mortgagors, decree-holders in a suit brought to set aside the mort-

CIVIL PROCEDURE CODE—*continued.*

——s. 244—*continued.*

2. PARTIES TO SUIT—*continued.*

Sarkar (1896), I. L. R., 24 Calc., 62, followed. BASUDEB GIRI *v.* BROJO MOHAN JANA (1902) [7 C. W. N., 54

[illegible]

of a decree against the judgment-debtor and placed in charge of a Receiver appointed by the Court. While the attachment was pending, the judgment-debtor granted a lease of the property to *M*, who thereupon set up a right to hold possession of the property and to pay to the Receiver only the rent due from him under the lease. *Held* that *M* was a [illegible]

Semble that the decree-holder was, in the circumstances, entitled to such a declaration. MATHEWSON *v* GODARDHAN TRIBEDI (1900) [I. L. R., 28 Calc., 492 : s.c., 5 C. W. N., 654

26. ———— — *Addition by appellant of parties to record as representatives of deceased respondent—Dismissal of appeal—Application by some representatives in execution—Dispute* [illegible]

a decree in a suit, the defendant appealed, and while that appeal was pending plaintiff died. [illegible]

had been brought on the record by defendant, as representatives of plaintiff, made an application in execution, in which the other representatives, similarly brought on, were not joined, on the ground that they were not, in fact, representatives Those other representatives, however, claimed to be entitled to join in the execution proceedings The Munsif stayed the application under the last clause of s. 244 of the Code of Civil Procedure, and directed the parties to decide their rights by separate suit [illegible]

jurisdiction in execution to re-open the question as to whether certain persons brought on the record as representatives of the deceased plaintiff, and as such made respondents in the appeal, had been properly joined as parties or not. VENKATACHALA REDDI *v.* VENKATARAMA REDDI (1901) [I. L. R., 24 Mad., 665

CIVIL PROCEDURE CODE—*continued.*

——s. 244—*concluded.*

2. PARTIES TO SUIT—*concluded.*

27. ———— *Determination of question whether party applying for execution is representative of decree-holder—Appeal.*—The effect of the last clause of s. 244 of the Code of Civil Procedure is to give the right of appeal against an order determining whether a party applying for execution is or is not the representative of the decree-holder. KRISHNAMA CHARIAR *v.* APPASAMI MUDALIAR (1901) . I. L. R., 25 Mad., 545

——s. 245—

See LIMITATION ACT, 1877, SCH. II, ART. 180 . . I. L. R., 26 Mad., 101

——s. 246—

See SET-OFF—CROSS-DECREES. [I. L. R., 24 All., 481 „ 26 Mad., 428

——s. 247—

See SALE IN EXECUTION OF DECREE—IMMOVABLE PROPERTY. [5 C. W. N., 497

——s. 248—

See LIMITATION ACT, 1877, SCH. II—
ART. 179—NOTICE OF EXECUTION; [6 C. W. N., 656
I. L. R., 27 Bom., 622
ART. 180. . 7 C. W. N., 793
[I. L. R., 30 Calc., 979

——s. 251—

See WARRANT OF ARREST—CIVIL CASES. [6 C. W. N., 845

——s. 252—

See REPRESENTATIVE OF DECEASED PERSON . I. L. R., 26 Mad., 792

——s. 257A—

1.—Agreement for satisfaction of judgment-debt—*Agreement in satisfaction of judgment-debt, suit to enforce—Previous sanction of Court.*—S. 257A, Civil Procedure Code, is a bar only to execution proceedings in respect of agreements therein mentioned, and does not prohibit their enforcement by separate suit. HURKISSEN DASS SEROWGEE *v.* NIBARAN CHANDER BANERJEE (1901) [6 C. W. N., 27

2. ———— *Execution of decree—Agreement which supersedes the operation of the decree, not within the terms of s 257A.*—*Held* that an agreement whereby a decree is adjusted, and so rendered unenforceable, is not within the purview of s 257A of the Code of Civil Procedure. *Ram Ghulam* v. *Janki Rai (1884), I. L. R., 7 All., 124; Jhabar Mahomed* v. *Modan Sonahar (1885), I. L. R., 11 Calc., 671; Hukum Chand Oswal* v. *Taharunnessa Bibi (1889), I. L. R., 16 Calc., 504; Jaji Kamti* v. *Annai Bhatta (1893)*

CIVIL PROCEDURE CODE—*continued.*

—s. 257A—*continued.*

I. L. R., 17 Mad., 382; Tukaram v. Anantbhat (1900), I. L. R., 25 Bom., 252; Venkata Subramania Ayyar v. Koran Kannan Ahmod (1902), I. L. R., 26 Mad., 19; and *Hurkissen Dass Serowgee v. Nibaran Chander Banerjee (1901), 6 C. W. N., 27,* referred to. *Heera Nema v. Pestonji Dossabhoy (1898), I. L. R., 22 Bom., 693,* and *Dhanram Ragho v. Ganpat Sadashiv (1902), I. L. R., 27 Bom., 96,* dissented from. *Dhan Bahadur Singh v. Anandi Prasad (1896), I. L. R., 18 All., 435;* and *Dalu Malwahi v. Palakdhari Singh (1896), I. L. R., 18 All., 479,* distinguished. LALJI SINGH *v.* GAYA SINGH (F.B. 1903)

[I. L. R., 25 All., 317

3.—Agreement to give time—*Decree—Mortgage—Amount of decree included in the mortgage—Satisfaction.*—The agreement to which the first paragraph of s. 257A of the Civil Procedure Code (Act XIV of 1892) relates is one which suspends and does not destroy the rights of execution consequent on a decree. Where a mortgage-bond was

under the decree, being an agreement to give time for the satisfaction of a judgment-debt, and that in respect of that sum no suit would lie. *Held* that the suit was maintainable. The mortgage-bond did not suspend the right to execute the decree, but it put an end to the remedy on the decree and sub-

4. ——— *Agreement to give time for the satisfaction of a judgment-debt*—The test as to whether s. 257A of the Code of Civil Procedure operates to render an agreement void is whether the parties agree that the judgment-debt, *qua* judgment-debt, shall be put an end to. If so, the section does not render the agreement void. If not, it does. After a decree had been passed in favour of a plaintiff in a suit, the defendant gave plaintiff a bond by which he undertook to pay

thereupon brought this suit on the bond to recover the balance which still remained unpaid, when it was pleaded in defence that the bond was void under s. 257A of the Code of Civil Procedure. *Held* that the effect of the bond was to keep alive the relation

CIVIL PROCEDURE CODE—*continued.*

—s. 257A—*concluded.*

of judgment-creditor and judgment-debtor by the express agreement of the parties, the debt being enforceable as a judgment-debt. *Also,* that, on its true construction, the bond was an agreement to give

representative of one of the judgment-debtors) had not been one of the parties to the suit in which the decree was obtained. *Juji Kamti v. Annai Bhatta, I. L. R., 17 Mad., 382,* and *Hukum Chand Oswal v. Taharunnessa Bibi, I. L. R., 16 Calc., 504,* commented on. VENKATA SUBRAMANIA AYYAR *v.* KORAN KANNAN AHMOD (1902)

[I. L. R., 26 Mad., 19

5.—Unsanctioned mortgage—*Decree—Satisfaction of decree by a mortgage without sanction of Court—Mortgage bond void.*—The plaintiff was the holder of a decree against the defendant for R2,870. On the 28th November, 1895, the plaintiff advanced to the defendant R59, and, in consideration of this advance and of the amount already due by the defendant to the plaintiff under

—s. 258—

See ante, s. 244—QUESTIONS IN EXECUTION OF DECREE . . 7 C. W. N., 172

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[I. L. R., 24 Mad., 412

—s. 260—

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[I. L. R., 26 Bom., 283

—s. 266—

See ATTACHMENT—*SUBJECTS OF ATTACHMENT*

—s. 268—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—

DEBTS; I. L. R., 26 Bom., 305

SALARY. I. L. R., 30 Calc., 713

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[I. L. R., 26 Mad., 673

CIVIL PROCEDURE CODE—*continued.*

—s. 273—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—

DECREES ; [I. L. R., 27 Bom., 556
6 C. W. N., 5

MESNE PROFITS. [I. L. R., 24 Mad., 341

—s. 274—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS [I. L. R., 26 Bom., 305

—s. 276—

See ante, s. 244—PARTIES TO SUIT. [I. L. R., 28 Calc., 492

See ATTACHMENT—ALIENATION DURING ATTACHMENT. [I. L. R., 23 All., 114
„ 26 Bom., 497

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES [6 C. W. N., 209

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS. [I. L. R., 25 All., 431

—s. 278—

See ante, s. 244—PARTIES TO SUIT. [I. L. R., 30 Calc., 134

See BENGAL TENANCY ACT, s. 170. [I. L. R., 28 Calc., 382

See CLAIM TO ATTACHED PROPERTY.

—s. 279—

See CLAIM TO ATTACHED PROPERTY. [I. L. R., 25 Mad., 555

—s. 280—

See ante, s. 244—PARTIES TO SUIT. [I. L. R., 30 Calc., 134

See CLAIM TO ATTACHED PROPERTY.

—s. 281—

See CLAIM TO ATTACHED PROPERTY. [I. L. R., 24 Mad., 20

—s. 282—

See CLAIM TO ATTACHED PROPERTY. [I. L. R., 25 Mad., 555

—s. 283—

See ante, s. 244—PARTIES TO SUIT. [I. L. R., 30 Calc., 134

See CLAIM TO ATTACHED PROPERTY.

See LIS PENDENS . I. L. R., 23 All., 60

—s. 285—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS [I. L. R., 29 Calc., 773

CIVIL PROCEDURE CODE—*continued.*

—s. 287—

See APPEAL—EXECUTION OF DECREES—QUESTIONS IN EXECUTION. [I. L. R., 30 Calc., 617

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES. [I. L. R., 30 Calc., 599

See SALE IN EXECUTION OF DECREE—

IMMOVABLE PROPERTY ; [5 C. W. N., 497

SETTING ASIDE SALE—IRREGULARITY. [6 C. W. N., 44, 836

—s. 291—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [6 C. W. N., 42, 44, 48

—s. 294—

See SALE IN EXECUTION OF DECREE—

INVALID SALES—FRAUD ; [5 C. W. N., 265

SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 23 All., 478
„ 24 All., 108

—s. 295—

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE [6 C. W. N., 577

See SALE IN EXECUTION OF DECREE—

DISTRIBUTION OF SALE PROCEEDS ;

SETTING ASIDE SALE—GENERAL CASES. [I. L. R., 29 Calc., 548

—s. 295, prov. (c)—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES [I. L. R., 30 Calc., 953

—ss. 304 to 319—

Ss. 304 to 319 of the Code of Civil Procedure apply to all sales of immovable property. KRISHNAJI *v.* MAHADEV VINAYAK (1900) [I. L. R., 25 Bom., 104

—s. 305—

See ante, s. 244—PARTIES TO SUIT. [I. L. R., 23 All., 116

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS [I. L. R., 26 Bom., 379

—s. 307—

See PAYMENT INTO COURT. [I. L. R., 25 Mad., 535

CIVIL PROCEDURE CODE—*continued.*

—s. 310A—

See ante, s. 244—PARTIES TO SUIT. [6 C. W. N., 127

See APPEAL—

EXECUTION OF DECREE—QUESTIONS IN EXECUTION; [I. L. R., 25 Bom., 418

SALE IN EXECUTION OF DECREE. [I. L. R., 28 Calc., 73

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES. [I. L. R., 29 Calc., 1, 459

See SALE IN EXECUTION OF DECREE—

DISTRIBUTION OF SALE PROCEEDS; [I. L. R., 30 Calc., 262

SETTING ASIDE SALE—

GENERAL CASES;

IRREGULARITY. [I. L. R., 26 Bom., 40
" 28 Calc., 73

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s 622. [6 C. W. N., 57

—s. 311—

See RIGHT OF SUIT—FRAUD [I. L. R., 29 Calc., 395

See SALE IN EXECUTION OF DECREE—

INVALID SALES—FRAUD; [5 C. W. N., 265

SETTING ASIDE SALE—

GENERAL CASES; [6 C. W. N., 5
I. L. R., 29 Calc., 548, 682
" 25 Mad., 244

SUBSTANTIAL INJURY; [7 C. W. N., 439

IRREGULARITY

—ss. 311, 312—

See SALE IN EXECUTION OF DECREE. [I. L. R., 28 Calc., 4

—s. 312—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 26 Bom., 40

—appeal from order under—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES. [I. L. R., 29 Calc., 548

—s. 315—

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . . 7 C. W. N., 105

CIVIL PROCEDURE CODE—*continued.*

—s. 315—*concluded.*

See SALE IN EXECUTION OF DECREE—

JOINT PROPERTY; [I. L. R., 23 All., 355

SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY. [5 C. W. N., 240

—s. 316—

See SALE IN EXECUTION OF DECREE—

ERRORS IN DESCRIPTION OF PROPERTY SOLD; [I. L. R., 27 Bom., 334

PURCHASERS, TITLE OF [I. L. R., 24 All., 475

—s. 317—

See BENAMI TRANSACTION—CERTIFIED PURCHASERS—CIVIL PROCEDURE CODE s. 317.

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD . I. L. R., 27 Bom., 334

—s. 318—

See BENGAL TENANCY ACT, s. 13. [7 C. W. N., 591

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE. [I. L. R., 30 Calc., 710

—s. 320—

See EXECUTION OF DECREE—EXECUTION BY COLLECTOR I. L. R., 25 All., 167

See LIMITATION ACT, 1877, SCH. II, ART 14 . . I. L. R., 24 All., 467

—s. 331—

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

—s. 335—

See LIMITATION ACT, 1877—

s 7 AND SCH II, ART 11; [I. L. R., 26 Bom., 730

SCH. II, ART 11. [I. L. R., 26 Bom., 146

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY. [I. L. R., 29 Calc., 25

—s. 336—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION. [I. L. R., 26 Mad., 258

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE. [I. L. R., 25 Mad., 724

CIVIL PROCEDURE CODE—*continued.*

—s. 336—*concluded.*

See SURETY—

LIABILITY OF SURETY;
[I. L. R., 24 Mad., 560, 637
„ 26 Mad., 366

DISCHARGE OF SURETY.
[I. L. R., 26 Mad., 366

—s. 337—

See WARRANT OF ARREST—CIVIL CASES.
[6 C. W. N., 845

—s. 341—

See ARREST—CIVIL ARREST.
[I. L. R., 26 Bom., 652

—s. 342—

See IMPRISONMENT. 5 C. W. N., 145

—s. 344—

See APPEAL—ORDERS—ORDER REFUSING APPLICATION TO BE DECLARED INSOLVENT . I. L. R., 27 Bom., 604

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 25 All., 204
„ 25 Mad., 724

—s. 345—

See APPEAL—ORDERS—ORDER REFUSING APPLICATION TO BE DECLARED INSOLVENT . I. L. R., 27 Bom., 604

—s. 347—

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[5 C. W. N., 91

—s. 349—

See SURETY—LIABILITY OF SURETY.
[I. L. R., 24 Mad., 637

—s. 350—

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[5 C. W. N., 90, 91

—s. 351—

See APPEAL—ORDERS.
[I. L. R., 23 All., 56

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[5 C. W. N., 91

—s. 353—

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[5 C. W. N., 91

—s. 357—

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—EXECUTION OF DECREE
[I. L. R., 30 Calc., 407

CIVIL PROCEDURE CODE—*continued.*

—s. 361—

See ABATEMENT OF SUIT—APPEALS.
[I. L. R., 26 Bom., 597
„ 25 All., 27

—s. 362—

See ABATEMENT OF SUIT—APPEALS.
[I. L. R., 25 All., 27

—s. 365—

See PARTIES—SUBSTITUTION OF PARTIES—

PLAINTIFFS;
[I. L. R., 27 Bom., 162
„ 26 Mad., 224

APPELLANTS.
[I. L. R., 26 Bom., 317

—s. 367—

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS . I. L. R., 27 Bom., 162

—s. 368—

See ABATEMENT OF SUIT—APPEALS.
[I. L. R., 23 All., 22
„ 26 Bom., 203

See APPEAL—ORDERS.
[I. L. R., 25 All., 206

See PARTIES—SUBSTITUTION OF PARTIES—DEFENDANTS.
[7 C. W. N., 529
I. L. R., 26 Mad., 230

See PRACTICE—CIVIL CASES—PARTIES.
[I. L. R., 30 Calc., 609

—s. 372—

See APPEAL—ORDERS.
[I. L. R., 24 All., 342, 532

See ASSIGNMENT OF CHOSE IN ACTION.
[I. L. R., 24 Mad., 252

See EXECUTION OF DECREE—EXECUTION AGAINST REPRESENTATIVES.
[I. L. R., 30 Calc., 961

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.
[I. L. R., 25 Mad., 406

See PARTIES—

ADDING PARTIES TO SUITS—RESPONDENTS;
[I. L. R., 23 All., 331

SUBSTITUTION OF PARTIES—PLAINTIFFS . I. L. R., 28 Calc., 171

See PRACTICE—CIVIL CASES—PARTIES.
[I. L. R., 30 Calc., 609

—s. 373—

See APPEAL—OBJECTIONS BY RESPONDENT—WITHDRAWAL OF APPEAL.
[I. L. R., 23 All., 130

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12. I. L. R., 24 Mad., 293

CIVIL PROCEDURE CODE—*continued.*

——s. 373—*concluded.*

See WITHDRAWAL OF SUIT.
[7 C. W. N., 186
I. L. R., 23 All., 219
„ 29 Calc., 239

——s. 375—

See APPEAL—DECREES.
[5 C. W. N., 877

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.
[I. L. R., 24 Mad., 326
7 C. W. N., 180

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

——s. 380—

See SECURITY FOR COSTS.

——s. 381—

See RES JUDICATA—CAUSES OF ACTION.
[I. L. R., 26 Bom., 637

——s. 387—

See COMMISSION—CIVIL CASES.
[7 C. W. N., 806

See PRACTICE—CIVIL CASES—COMMISSION.
[I. L. R., 30 Calc., 934

——ss. 394, 395—

See COMMISSIONER FOR TAKING ACCOUNTS.
[5 C. W. N., 692

——s. 396—

See PARTITION—MISCELLANEOUS CASES.
[5 C. W. N., 128

——s. 399—

See COMMISSION—CIVIL CASES
[7 C. W. N., 806

See PRACTICE—CIVIL CASES—COMMISSION.
[I. L. R., 30 Calc., 934

——Ch. XXVI (ss. 401 to 415)—

See PAUPER SUIT.

——s. 403—

See TRANSFER OF CIVIL CASES—GENERAL CASES . . I. L. R., 24 All., 356

——s. 407—

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.
[I. L. R., 26 Mad., 656

——ss. 410, 413—

See LIMITATION ACT, s. 4
[I. L. R., 28 Calc., 427

——s. 416—

See SECRETARY OF STATE.
[I. L. R., 27 Bom., 18

CIVIL PROCEDURE CODE—*continued.*

——s. 424—

See BOMBAY CITY IMPROVEMENT ACT.
[I. L. R., 27 Bom., 424

See PUBLIC OFFICER.
[I. L. R., 26 Bom., 809

See SECRETARY OF STATE.
[I. L. R., 27 Bom., 189

1.—**Suit against Secretary of State and others**—*Notice previous to suing Secretary of State for India in Council or public officer—Notice by two out of three joint owners of land—"Cause of action"*—Three joint owners of land sued [illegible] rates, which [illegible] om them by [illegible] and 1303. [illegible] two of the plaintiffs, and that notice omitted to state the imposition of the rate for *fasli* 1303 as a cause of action, as at the date of its being given the rate for *fasli* 1303 had not been levied. On its being contended that the notice was invalid and that the suit founded thereon was unsustainable: *Held* that the notice was not invalid on the ground that it proceeded from only two out of three of the joint owners. The object of the notice required by s 424 of the Code of Civil Procedure is to give the defendant an opportunity for settling the claim, if so advised, without litigation, and that object had been fully attained by two out of three plaintiffs giving the notice. *Held* also that the notice was not invalid by reason of the fact that the collection of rate for *fasli* 1303 had not been stated as a cause of action. The collection of a further sum for a subsequent *fasli*, after notice of the suit had been given, was not a fresh cause of action requiring a further notice under s 424 of the Code of Civil Procedure The term "cause of action," in s 424, should not be construed in a narrow sense, the object of the section being merely to inform the defendant substantially of the ground of complaint SECRETARY OF STATE FOR INDIA IN COUNCIL *v* PERUMAL PILLAI (1900)
[I. L. R., 24 Mad., 279

2 ——— *Suit against Secretary of State in Council—Notice—Death of intending plaintiff before institution of suit—Notice already served not available to representatives of original intending plaintiff—Rejection of plaint—Civil Procedure Code, s 54*—Where a person, apparently intending to institute a suit against the Secretary of State in Council, served a notice, in the manner prescribed by s 424 of the Code of Civil Procedure, of his intention to institute such a suit, but died before the suit was instituted, it was *held* that the notice served under s 424 did not enure for the benefit of the representatives of the person who had served it and entitle [illegible] plaintiff to serve the requisite notice, but its only

CIVIL PROCEDURE CODE—*continued.*

——s. 424—*concluded.*

course is to [illegible] 54 (a) of the Code. *Renda* [illegible] distinguished [illegible] STATE FOR [illegible]

[I. L. R., 25 All., 10

3. ———— *Plaint, amendment of—Damages, suit for.*—S. 424 of the Civil Procedure Code relates to the institution of a suit against the Secretary of State. There is nothing in the law to show that in case of any amendment, necessitated by alleged discovery of facts previously unknown to the plaintiff, the Secretary of State should have a further notice of two months. No notice of action is required against the Sub-Collector, who is joined in the action with the Secretary of State, inasmuch as he is not sued for any act done by him independently of the Government. EZRA *v.* SECRETARY OF STATE (1902)

[I. L. R., 30 Calc., 36 : s.c., 7 C. W. N., 249

——s. 430—

See PLAINT—VERIFICATION AND SIGNATURE . . I. L. R., 30 Calc., 103

——s. 432—

—Suit by Ruling Chief—*Applicability of s. 432 to suits in Revenue Courts—Plaint—Signature of plaint by an unauthorized agent who subsequently becomes empowered to sign.—Held* [illegible]

signing had not been specially appointed by the Government for such purpose under s. 432 of the Code of Civil Procedure [illegible]

[illegible] *Weekly Notes,* 1893, *p.* 65, distinguished. MAHARAJA OF REWAH *v.* SWAMI SARAN (1903)

[I. L. R., 25 All., 635

——Ch. XXIX (ss. 435, 436)—

See INTEREST - MISCELLANEOUS CASES—BILL OF EXCHANGE

[I. L. R., 30 Calc., 446

——s. 435—

See PLAINT—VERIFICATION AND SIGNATURE . . . 5 C. W. N., 91

[I. L. R., 30 Calc., 103

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R., 26 Mad., 139

——s. 437—

See PARTIES—

PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[6 C. W. N., 488

CIVIL PROCEDURE CODE—*continued.*

——s. 437—*concluded.*

See PARTIES (*contd.*)—

SUBSTITUTION OF PARTIES—PLAINTIFFS.

[7 C. W. N., 817

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 29 Calc., 682

——s. 443—

See ante, s 108 . I. L. R., 24 All., 383

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.

[I. L. R., 30 Calc., 613

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 30 Calc., 1021

„ 26 Bom., 298

——s. 457—

See MINOR—REPRESENTATION OF MINORS IN SUITS . I. L. R., 23 All., 459

——s. 462—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.

[I. L. R., 24 Mad., 326

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE

[I. L. R., 26 Bom., 109
7 C. W. N., 90

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 26 Bom., 298

„ 29 Calc., 735

——s. 463—

See LUNATIC . I. L. R., 24 Mad., 504

——s. 483—

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT . . 7 C. W. N., 216

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[I. L. R., 26 Mad., 473

——s. 491—

See APPEAL—ORDERS.

[I. L. R., 24 Mad., 62

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ATTACHMENT.

[I. L. R., 26 Mad., 504

——s. 492—

See INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R., 25 All., 431

„ 27 Bom., 357

——s. 493—

See CONTEMPT OF COURT—CONTEMPT GENERALLY . I. L. R., 26 Mad., 494

See INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R., 27 Bom., 357

26 Mad., 168

CIVIL PROCEDURE CODE—*continued.*

——s. 493—*concluded.*

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 24 Mad., 447

——s. 501—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.
[I. L. R., 26 Mad., 686

—Right of suit—*Ss. 501, 583—Decree not*

[illegible]

have contained such an order and is imperfect

[illegible]

——s. 503—

See RECEIVER . . 5 C. W. N., 223
[7 C. W. N., 452
I. L. R., 30 Calc., 696

——Ch. XXVII (ss. 506 to 526)—

See APPEAL—ARBITRATION.
[I. L. R., 29 Calc., 167

See ARBITRATION.

——s. 508—

See APPEAL—ARBITRATION
[I. L. R., 26 Mad., 47

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION
[7 C. W. N., 160, 343
I. L. R., 24 All., 229
" 28 Calc., 303

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE
[I. L. R., 30 Calc., 218

——ss. 510, 514—

See ARBITRATION—REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION.
[I.L. R.,24 All., 312

CIVIL PROCEDURE CODE—*continued.*

——s. 521—

See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUNDS FOR SETTING THEM ASIDE.

——s. 522—

See APPEAL—ARBITRATION.
[I. L. R., 29 Calc., 167
" 26 Mad., 47

——s. 523—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.
[7 C. W. N., 160

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 30 Calc., 218

——s. 525—

See ARBITRATION—

REFERENCE OR SUBMISSION TO ARBITRATION;
[I. L. R., 24 Mad., 326

AWARDS—VALIDITY OF AWARDS;
[I. L. R., 29 Calc., 278

PRIVATE ARBITRATION.
[I. L. R., 24 Mad., 31

See LEASE—CONSTRUCTION—PROVISION FOR RENEWAL. I. L. R., 30 Calc., 831

——Ch. XXXIX (ss. 532 to 538)—

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON . 5 C. W. N., 259

——s. 539—

See DECLARATORY DECREE, SUIT FOR—ENDOWMENT. I. L. R., 26 Mad., 450

See REFERENCE TO HIGH COURT—CIVIL CASES . I. L. R., 25 Bom., 327

See RIGHT OF SUIT—CHARITIES AND TRUSTS . I. L. R., 24 All., 631

——s. 540—

See APPEAL—DECREES
[I. L. R., 28 Calc., 81

See MADRAS GENERAL CLAUSES ACT, s. 8.
[I. L. R., 24 Mad., 39

See TRANSFER OF PROPERTY ACT—

ss. 88 AND 89;
[I. L. R., 25 Mad., 244

s 89 . I. L. R., 29 Calc., 651

——s. 544—

See ABATEMENT OF SUIT—APPEALS.
[I. L. R., 25 All., 27

1.—Joint appeal—*Appeal—Joint appellant—Presentation of appeal beyond time—Affidavit excusing delay in appealing made by only one*

CIVIL PROCEDURE CODE—*continued.*

——s. 544—*continued.*

a partition suit a decree was passed against twenty-four defendants, whose interests in the subject-matter of the suit were not identical. Part of the property in suit consisted of a *kulkarni vatan*, one-third share of which (*inter alia*) was given by the decree to the plaintiffs Eleven of the defendants appealed against the decree, of whom only six (defendants 1 to 6) had an interest in the *kulkarni vatan*. The decree was passed on the 11th April, 1898, and the appeal was not presented until the 7th June, 1898, *i.e.*, beyond the period (thirty days) allowed by the Limitation Act (XV of 1877) The only affidavit excusing the delay was made by defendant 14, who was not

appellate Court modified the decree and reduced the one-third share of the *kulkarni vatan* given to the plaintiffs to a one-sixth share. The plaintiffs thereupon appealed to the High Court. *Held* (reversing the decree of the lower Appellate Court and restoring that of the first Court) that the Appellate Court erred in altering the share of the *kulkarni vatan*. Defendant 14 had no interest in the variation of the decree, having no interest in the *kulkarni vatan*, and s 544 of the Civil Procedure Code (Act XIV

2. ———————— *Appeal by two parties on grounds common to all.*—*A* brought a suit against *B*, *C*, *D* and others, for recovery of

B and *C* alone preferred an appeal, and the lower

being had to the terms of the provisions of s 544 of the Civil Procedure Code, the Court below was right in allowing the appeal in favour of *D* also. *Syed Hossain* v. *Madan Khan (1894), I. L. R., 17 Mad., 265*, dissented from. *Sreeram Ghuttuck* v. *Brojo Mohun Ghossal (1869), 11 W. R., 419*, and *Boydo Nath Surmah* v. *Ojan Bibee (1869), 11*

CIVIL PROCEDURE CODE—*continued.*

——s. 544—*concluded.*

W. R., 239, distinguished. Ram Kamal Shaha v. Ahmad Ali (1903) . I. L. R., 30 Calc., 429

3. ———————— *Practice—Procedure—Civil Procedure Code (Act XIV of 1882), ss. 362, 544 and 582—Appeal—Death of joint appellant pending appeal—Legal representatives of deceased appellant not brought on the record—Appeal proceeded with by surviving appellant—Power of Court to hear the appeal and reverse whole decree.*—In a suit for partition, the lower Court passed a decree for the plaintiffs. Two of the defendants, who denied the plaintiffs' right and claimed the property as their own, filed a joint

defendants had appealed on grounds common to them both, the

the app

s. 544

1882).

——s. 545—

See Execution of Decree—Stay of Execution

[I. L. R., 25 Bom., 243, 583
„ 28 Calc., 734
5 C. W. N., 781

See Surety—Enforcement of Security.
[I. L. R., 25 Bom., 409
„ 30 Calc., 1060

——s. 546—

See Execution of Decree—Stay of Execution.
[I. L. R., 25 Bom., 243, 583

See Surety—Enforcement of Security
[I. L. R., 25 Bom., 409

——s. 556—

See Appeal—Default in Appearance
[I. L. R., 24 All., 464
„ 26 Mad., 267

——s. 558—

See Appeal—Default in Appearance.
[I. L. R., 24 All., 464
„ 26 Mad., 599

——s. 560—

—*Rehearing of appeal, heard ex parte—Limitation—Amendment.*—An application for rehearing of an appeal presented originally within the period of limitation, but returned for amendment and presented, after amendment, after the period of

CIVIL PROCEDURE CODE—*continued.*

——s. 560—*concluded.*

limitation, cannot be rejected as being out of time. SHAMA PROSAD GHOSE *v.* TAKI MULLIK (1901) [5 C. W. N., 816

——s. 561—

See APPEAL—OBJECTIONS BY RESPONDENT. [I. L. R., 25 All., 628 „ 23 All., 93, 130

See COURT-FEES ACT, 1870, s. 16. [I. L. R., 25 Mad., 24

——s. 562—

See APPEAL—EX PARTE CASES [5 C. W. N., 153

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . I. L. R., 23 All., 629

See REMAND—

POWER OF REMAND; [I. L. R., 23 All., 167

CASES OF APPEAL AFTER REMAND [6 C. W. N., 326 I. L. R., 28 Calc., 324 „ 26 Mad., 518

——ss. 564, 566—

See REMAND—POWER OF REMAND. [I. L. R., 23 All., 167

——s. 568—

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL. [I. L. R., 23 All., 121 6 C. W. N., 31

——s. 571—

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS . I. L. R., 26 Bom., 317

——s. 575—

See LETTERS PATENT, HIGH COURTS, 1865, CLS. 15 AND 36 [I. L. R., 25 Mad., 548

——s. 578—

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE [5 C. W. N., 91

See MINOR—REPRESENTATION OF MINOR IN SUITS I. L. R., 30 Calc., 1021

See REMAND—CASES OF APPEAL AFTER REMAND I. L. R., 28 Calc., 324

See WITNESS—CIVIL CASES. [I. L. R., 28 Calc., 37

——s. 582—

See ABATEMENT OF SUIT—APPEALS. [I. L. R., 26 Bom., 203, 597 I. L. R., 23 All., 22 „ 25 All., 27

CIVIL PROCEDURE CODE—*continued.*

——s. 582—*concluded.*

See APPEAL—ORDERS. [I. L. R., 25 All., 174

See APPELLATE COURT—

INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT; [I. L. R., 30 Calc., 516

EXERCISE OF POWERS—SPECIAL CASES—PLAINT, AMENDMENT OF. [5 C. W. N., 273

——s. 582A—

See COURT-FEES ACT, s. 28. [I. L. R., 25 Mad., 380

——s. 583—

See ante, s. 244—QUESTIONS IN EXECUTION OF DECREE [I. L. R., 25 All., 441

See APPEAL—EXECUTION OF DECREES—PARTIES TO SUITS . 5 C. W. N., 426

See ATTACHMENT—SUBJECTS OF ATTACHMENT—MESNE PROFITS. [I. L. R., 24 Mad., 341

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT. [5 C. W. N., 287

See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS. [I. L. R., 24 All., 361

——s. 584—

See SPECIAL OR SECOND APPEAL.

——s. 585—

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT. [I. L. R., 26 Bom., 617

——s. 586—

See SPECIAL OR SECOND APPEAL—

ORDERS SUBJECT OR NOT TO APPEAL; [I. L. R., 25 Mad., 540

SMALL CAUSE COURT SUITS.

——s. 588—

See APPEAL—

EX PARTE CASES; [I. L. R., 25 All., 280

EXECUTION OF DECREES;
ORDERS

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15 . I. L. R., 25 Mad., 555

See PAUPER SUIT—APPEALS [I. L. R., 23 All., 364

See REMAND—CASES OF APPEAL AFTER REMAND . I. L. R., 28 Calc., 324 „ 26 Mad., 518

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

CIVIL PROCEDURE CODE—*continued.*

——s. 588, cls. (18) and (21)——

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS [I. L. R., 27 Bom., 162
" 28 Calc., 171

——s. 589—

See APPEAL—ORDERS.
[I. L. R., 23 All., 56
" 27 Bom., 604
" 25 All., 174

——s. 591—

See APPEAL—

DEFAULT IN APPEARANCE;
[I. L. R., 24 All., 464

EX PARTE CASES.
[I. L. R., 25 All., 280

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15 . I. L. R., 25 Mad., 555

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS I. L. R., 27 Bom., 162

——s. 592—

See PAUPER SUIT—APPEALS
[I. L. R., 24 All., 172
I. L. R., 26 Mad., 369, 437

——ss. 594 to 616—

See APPEAL TO PRIVY COUNCIL.

——s. 594—

———meaning of "decree"—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—LEAVE TO APPEAL . I. L. R., 27 Bom., 415

——ss. 594, 595 (a)—

See APPEAL—EX PARTE CASES.
[5 C. W. N., 153

——ss. 596, 600—

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.
[6 C. W. N., 362

——s. 617—

See REFERENCE TO HIGH COURT—CIVIL CASES . I. L. R., 25 Bom., 327

——ss. 617, 621—

See SMALL CAUSE COURT, PRESIDENCY TOWNS — PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.
[I. L. R., 30 Calc., 458

——s. 622—

See APPEAL—ORDERS
[I. L. R., 28 Calc., 177

See PRACTICE — GENERAL — VAKIL AND COUNSEL . I. L. R., 30 Calc., 986

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

CIVIL PROCEDURE CODE—*concluded.*

——s. 623—

See LIMITATION ACT, 1877, s. 5 AND SCH. II, ART. 173.
[I. L. R., 26 Bom., 485

See REVIEW.

——s. 629—

See APPEAL—ORDERS. 5 C. W. N., 485

See LIMITATION ACT, 1877, s. 5, AND SCH. II, ART. 173. I. L. R., 26 Bom., 485

——s. 640—

See PAUPER SUIT—APPEALS.
[I. L. R., 24 All., 172

——s. 644—

See WARRANT OF ARREST—CIVIL CASES.
[6 C. W. N., 845

——s. 646B—

See REFERENCE TO HIGH COURT—CIVIL CASES . . I. L. R., 25 All., 135

——s. 647—

See APPEAL—EXECUTION OF DECREES—QUESTIONS IN EXECUTION.
[I. L. R., 26 Mad., 428

See REFERENCE TO HIGH COURT—CIVIL CASES . I. L. R., 25 Bom., 327

——s. 648—

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT . . 7 C. W. N., 216

——s. 649—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION
[5 C. W. N., 150

——s. 651—

See APPEAL—OBJECTIONS BY RESPONDENT.
[I. L. R., 30 Calc., 655

——Sch. IV, Form 109—

See INTEREST — MISCELLANEOUS CASES—MORTGAGE . . 6 C. W. N., 769

————Form 115—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT . 5 C. W. N., 383

———— Forms 125, 126—

See WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES.
[I. L. R., 24 Mad., 200

————Form 136—

See WARRANT OF ATTACHMENT.
[I. L. R., 29 Calc., 244

———— Form 154—

See WARRANT OF ARREST—CIVIL CASES.
[6 C. W. N., 845

CIVIL PROCEDURE CODE AMENDMENT ACT (V OF 1894).

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.
[I. L. R., 29 Calc., 1

CLAIM.

——abandonment of—

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

——alternative—

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION.
[I. L. R., 24 Mad., 409

——*bona fide* claim of right—

See MISCHIEF . 7 C. W. N., 859

——proof of—

See INSOLVENCY — INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[5 C. W. N., 91

CLAIM TO ATTACHED PROPERTY.

See BENGAL TENANCY ACT, s 170
[I. L. R., 28 Calc, 382.

See CIVIL PROCEDURE CODE, s 244—PARTIES TO SUIT.
[I. L. R., 30 Calc., 134
6 C. W. N., 127

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE
[I. L. R., 26 Mad., 673

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
[7 C. W. N., 243

1.—Co-heirs—*Execution of decree—Civil Procedure Code, s. 283—Decree against one only of several co-heirs of deceased debtor—Transfer by judgment-debtor of property belonging to himself and co-heirs—Plea of jus tertii raised by trans-*

[illegible]

I. L. R, 7 All, 822, Nathmal Dass v Tajammul [illegible]

CLAIM TO ATTACHED PROPERTY—*continued.*

[illegible]

"*Judgment —Appeal*—An order passed by a Judge sitting on the Original Side of the High Court, dismissing a claim preferred under ss 278 and 282 of [illegible]

[illegible]

mortgagees according to the amounts advanced by them. [illegible] will appointi[illegible] out prob[illegible] then ca[illegible] the three other creditors filed a claim petition, asking that the attachment might be declared to be subject to the mortgage *Held* that the applicants were competent to prefer the claim and establish, within [illegible]

[illegible] *trustee, they had a beneficial or equitable interest* therein A beneficial interest is as much an interest, [illegible] as a legal interest in [illegible] CHETTI v. [illegible]

[illegible] 5 Mad., 555

3—Party—*Civil Procedure Code (Act XIV of 1882), s 283—"Party against whom an order has been made"*—Plaintiff sued to recover possession of immovable property. The land in question had, on a previous occasion, been attached in execution of a decree against plaintiff, whereupon his younger brother, the present second defendant, had preferred a claim-petition, on which an order was passed holding that plaintiff (then judgment-debtor) and second defendant (then claimant) were jointly entitled to the land The claim was held to be good to the extent of a moiety of the land, which was accordingly released from attachment, the other moiety being ordered to be sold, the claimant's claim thereto being rejected Plaintiff satisfied the decree, and the property was not sold He now sued to recover possession of it. *Held* that, having regard to the terms of the order in the claim proceedings, and to the fact that it had not been proved that plaintiff had actually received notice of them, plaintiff was not a party against whom an order had been made, within the meaning of s. 283 of the Code of Civil Procedure, and that the order was not conclusive as against him. *Nelletom Perengaryprom v Tayanbarry Parameshwaren Nambudri, 4 M. H C R, 472,* doubted MOIDIN KUTTI v. KUNHI KUTTI ALI (1902) . I. L. R., 25 Mad., 731

CLAIM TO ATTACHED PROPERTY—*continued.*

4.—Possession—*Civil Procedure Code (Act* [illegible]

[illegible]

s. 244, Civil Procedure Code, but it is a claim under s 278, and no appeal lies against an order passed in such a case. *Rajrup Singh v. Ram Golam R* [illegible]

[illegible]

Bom, 237, referred to. BHAJAHARI PAL v RAM LAL DAS (1901) . . . 6 C. W. N., 63

5.——————*Attachment—Claim—Property attached in possession of, and standing in the name of, some person other than the judgment-debtor—Civil Procedure Code (Act XIV of 1882), ss. 278, 280*—In an investigation under s 280 of the Civil Procedure Code, the Court has to determine the question of possession merely, and cannot [illegible]

[illegible]

hold merely on suspicion that the claim is untenable. *Sreeman Chunder Dey v. Gopal Chunder Chukerbutty (1866), 11 M. I. A., 28,* and *Moonshee Buzloor Ruheem v. Shumsoonissa Begum (1867), 11 M. I. A., 551,* referred to. MONMOHINEY DASSEE v. RADHA KRISTO DASS (1902)

[I. L. R., 29 Calc., 543

6.—Right to receive debt—*Civil Procedure Code (Act XIV of 1882), ss 280, 281, 283—Property in the possession of a judgment-debtor—Attachment of right to receive a debt—Specific Relief Act (I of 1877), s 42—Consequential relief.*—First defendant had obtained a decree against second defendant, in execution of which he had attached and sold the second defendant's right to collect rent payable to him in respect of certain properties by tenants for a certain year A claim had been preferred by plaintiff, objecting to the said attachment on these grounds, under s 278 of the Code of Civil Procedure, but had been rejected Plaintiff now sued for a declaration that the attachment and sale were invalid on the grounds that the properties belonged to a certain *mutt*, and not to second defendant; that second defendant had been manager of the *mutt*, but had been dismissed, plaintiff replacing him; and that the rents in question were not liable for the debts of second defendant. The plaintiff prayed for no relief consequential to the declaration. *Held* that the attachment was of a debt in respect of which prohibitory orders had been issued under s. 268 of the Code of Civil Procedure; that the attachment of a right to receive a debt is not properly capable of possession within the meaning of ss 280 and 281 of the Code of Civil Procedure; and that the suit was therefore not one instituted under s 283 to establish a right to attached property; and that it had been properly dismissed. *Mussamut Rambutty Kooer v. Kamessur Pershad, 22 W. R., C. R., 36,* referred to BASAVAYYA v. SYED ABBAS SAHEB (1900)

[I. L. R., 24 Mad., 20

CLIENT.

——authority of pleader to bind—

See PLEADER, AUTHORITY OF, TO BIND CLIENT.

CO-ACCUSED.

See COMPOUNDING OFFENCE. [7 C. W. N., 176

See JOINDER OF CHARGES. [5 C. W. N., 294

See REVISION—CRIMINAL CASES—ACQUITTALS. [7 C. W. N., 493, 711

COCAINE.

See BOMBAY ABKARI ACT (BOM. ACT V OF 1878), ss 3 (9) AND 62. [I. L. R., 27 Bom., 551

CODE.

——essence of—

See BENGAL TENANCY ACT (VIII of 1885), s 5 (5) . . 6 C. W. N., 825

CO-DEFENDANT.

See RES JUDICATA—PARTIES—CO DEFENDANTS.

CODICIL.

See PROBATE—OF WHAT DOCUMENTS GRANTED . I. L. R., 29 Calc., 311

COIN.

See COUNTERFEITING COIN.

See GAMBLING . . 5 C. W. N., 503

COIN—*concluded.*

——certain coin not legal tender—

See Stolen Property—Disposal of, by the Court [I. L. R., 25 Bom., 702

COLLECTOR.

See Execution of Decree—Execution by Collector.

——acquisition of land by—

See Land Acquisition Act (I of 1894) [I. L. R., 30 Calc., 36

——certificate of—

See Pensions Act, s 3 and s 6 [I. L. R., 25 All., 73

——duty of, when applying for inquiry into value of assets for probate or administration—

See Court-fees Act (VII of 1870), s. 19H . . . 6 C. W. N., 898

——jurisdiction of, to hear appeal—

See Grant—Power to grant [I. L. R., 26 Mad., 742

——sanction of—

See Madras Abkari Act, s 21 [I. L. R., 26 Mad., 430

COLLUSION.

See Onus of Proof—Mortgage [5 C. W. N., 403

See Specific Relief Act, s 9 [6 C. W. N., 616

COLONIAL COURTS OF ADMIRALTY ACT, 1890 (53 & 54 Vict. c. 27).

See Admiralty or Vice-Admiralty Jurisdiction [I. L. R., 29 Calc., 402

COMMENCEMENT OF ACT

——issue of orders before—

See Bengal Irrigation Act, ss. 1, 6 [I. L. R., 28 Calc., 487

COMMISSION.

——criminal cases—

See Nepal . 7 C. W. N., 635

——exclusion of evidence taken on—

See Hindu Law—Adoption—Evidence of Adoption [I. L. R., 30 Calc., 999

COMMISSION—*concluded.*

——to make partition—

See Partition—Miscellaneous Cases. [5 C. W. N., 128

——to take evidence—

See Practice—Civil Cases—Commission. [I. L. R., 30 Calc., 934

CIVIL CASES

[illegible]

[illegible] *bility*—Evidence of a foreign witness taken in foreign territory outside the jurisdiction of this Court under a commission rightly issued under s 387 of the Civil Procedure Code, and executed in accordance with the provisions of s 399 of the same, is admissible, and s. 13 of the Oaths Act has no application. Kadambini Dassi v. Kumudini Dassi (1903) . . . 7 C. W. N., 806

2.—Refusal of admission to Commissioner—*Criminal Procedure Code (Act V of 1898), s 467—Examination on commission—Notice of issue of commission to a party's pleader—Civil Procedure Code (Act XIV of 1882), s 40—Service—Refusing admission to commission—Penal Code (Act XLV of 1860), s 174, proceedings under.*—A commission was issued to take the deposition of the defendant in a civil suit, a lady A notice of the commission was shown to the pleader of the lady, and his signature taken thereupon; the notice was not addressed to any particular person On the day appointed for the commission, the doors of the lady's [illegible]

[illegible] properly served on the pleader *Also* that there is [illegible]

[illegible]

COMMISSIONER.

——reference to—

See Agreement [I. L. R., 29 Calc., 306

COMMISSIONER FOR TAKING ACCOUNTS.

—*Civil Procedure Code (Act XIV of 1882), ss. 394, 3[illegible]—Report of a Commissioner—Order confirming the report, appeal from—Appeal Court, power of, to deal with findings of fact by the*

COMMISSIONER FOR TAKING ACCOUNTS—*concluded*

Commissioner—*Held per* PRINSEP and HILL, JJ. (MACLEAN, C.J., dissenting)—In an appeal from a [illegible]

limited to questions of principle when examining such report. *Ahmed Nanu Bhai* v. *Kharap Karim* [illegible]

missioner before it accepts them, and the fact that the judgment of the first Court is in affirmance of the report of a Commissioner does not affect the powers of the Court of Appeal *Moung Tha Hnyeen* v. *Moung Pan Nyo (1900), 4 C. W. N.*, 608, distinguished *Watson* v. *Aga Mehedee Sherazee (1874), L. R., 1 I. A.*, 346, referred to. *Per* PRINSEP, J.—The report of a Commissioner requires affirmance by an order of Court, to make it operative, and cannot be regarded as a judgment of a Court. *Per* HILL, J.—Under s 395, Civil Procedure Code, the report of a Commissioner, if accepted by the Court, is only evidence in the suit of facts found by him, but is not a decision, nor can it be treated on the same footing as the verdict of a jury *Mackintosh* v. *Great Western Ry Co (1887), 4 Giff.*, 683, and *Moung Tha Hnyeen* v. *Moung Pan Nyo (1900), 4 C. W. N.*, 608, distinguished *Baroness Wenlock* v. *River Dee Company (1887), 19 Q. B. D.*, 155, referred to *Per* MACLEAN, C.J.—If there has been a fair investigation of the matter by the Registrar, and his finding has been confirmed by the Judge of first instance, the Court of Appeal ought not to interfere except on the strong ground of manifest error or manifest abuse It should not interfere merely on the ground that if the matter was *res integra* it would have been disposed to attach more weight to this or that particular piece of evidence. *Mackintosh* v. *Great Western Ry. Co. (1887), 4 Giff.*, 683, and *Moung Tha Hnyeen* v. *Moung Pan Nyo (1900), 4 C. W. N.*, 608, referred to CHETTY v. MAHOMED ESSA SAHEB (1901)

[5 C. W. N., 692

COMMITMENT.

See REVISION—CRIMINAL CASES—COMMITMENTS . . 7 C. W. N., 327

——in absence of accused—

See ACCUSED PERSON . 5 C. W. N., 110

——irregularity in—

See DISCHARGE OF ACCUSED

[I. L. R., 20 Mad., 477

See REVISION, CRIMINAL CASES—DISCHARGE OF ACCUSED . 7 C. W. N., 77

——power of Coroner to commit to High Court—

See CORONER . . 7 C. W. N., 880

COMMITMENT—*concluded*

——power of Sessions Judge or District Magistrate to order—

See CRIMINAL PROCEDURE CODE, s 436

[5 C. W. N., 574

—*Criminal Procedure Code (Act V of 1898), s. 215—Commitment, quashing of, when may be made—Points of law—Statements made by witnesses—Absence of evidence to go to a jury—Con*[illegible]

GHOSE v. KING-EMPEROR (1901)

[5 C. W. N., 411

COMMON OBJECT.

See CHARGE TO JURY—MISDIRECTION

[I. L. R., 28 Calc., 379

See KIDNAPPING 6 C. W. N., 208

See UNLAWFUL ASSEMBLY

COMPANIES ACT (VI OF 1882).

See COMPANY

—s. 169—*Appeal from order in winding up—Ex parte application for extension of time—Service* [illegible]

[illegible] petitions An *ex parte* application was made by them, under s 169, for an extension of time

[illegible]

sary, but, inasmuch as the order granting an ex-

COMPANIES ACT (VI OF 1882)—*concluded*

tension had been made *ex parte*, the respondents were entitled, to raise objection to it at the hearing. Such an appeal must, under s. 169, be filed within three weeks of the date of the order, at the latest *Per* BHASHYAM AYYANGAR, *J.*—While refraining from expressing an opinion on the point, the terms of s 169 of the Companies Act are probably complied with by lodging the memorandum of appeal. LAKSHMINARASAYYA SETTI *v* VENKANNA SETTI (1901) . . I. L. R., 25 Mad., 576

COMPANIES (MEMORANDUM OF ASSOCIATION) ACT, 1895 (XII OF 1895).

——ss. 9, 10—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—LEAVE TO APPEAL
[I. L. R., 27 Bom., 415

COMPANY.

——acquisition of land for—

See LAND ACQUISITION ACT (I OF 1894)
[I. L. R., 30 Calc., 36

——appeal by—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—LEAVE TO APPEAL
[I L. R., 27 Bom., 415

——Limited, liabilities of—

See EXECUTION OF DECREE—EXECUTION AGAINST REPRESENTATIVES
[I. L. R., 30 Calc., 961

——powers of Directors—

See PRESIDENCY BANKS ACT (XI OF 1876), ss. 36, 37 I. L. R., 25 Bom., 52

——principal officer of—

See PLAINT—VERIFICATION AND SIGNATURE , 5 C. W. N., 91

1. TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES

1.—Rectification of register—*Indian Companies Act (VI of 1882), s 58—Application for rectification of register—Evidence Act (I of 1872),*

COMPANY—*continued*

1. TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES—*continued*

s. 115—Estoppel—Hindu Law—Property held by

pany credited the amounts paid by the successor towards the amount due as calls on the shares Subsequently plaintiff, another successor in the office, applied to have the company's share register altered, so that the shares should stand in the name of the *mutt* This the directors refused to do unless plaintiff provided them with a transfer from the original allottee (who was still alive) or an indemnity by the *mutt.* Plaintiff did neither, and the shares were ultimately declared by the company to be forfeited Plaintiff now sued the company, claiming that the shares were not the private property of the original allottee, but belonged to the

arose that the money paid belonged to the *mutt.* Nor was the company estopped, by s 115 of the

Act, though such an application could not have been successful, as in the circumstances he could not have

2.—Sale of shares—*Voucher by company of title of vendor—Estoppel—Pukka receipt issued by company*—In 1898 the plaintiff, through his broker, purchased in the open market three shares in the defendant company According to the practice usual in Bombay, the transfer deeds signed by the vendors were brought to him by his broker and were signed by him and returned to the seller's broker, who lodged them, together with the share certificates, in the office of the company, and obtained a *katcha* receipt for the same, addressed to the seller. The directors of the company having duly approved of the transfers, the seller's broker returned the *katcha* receipt and obtained from the company a *pukka* receipt addressed to the plaintiff (*i e.*, the purchaser) in the following terms "Received for transfer the following share certificates with transfer deeds duly executed —

Nos .
Total shares only.

(Sd.)——Transfer Clerk.

N B—This receipt shall be presented within one week from this date, when the share certificates will

COMPANY—*continued.*

1. TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES—*concluded.*

be returned. The Company will not hold itself responsible for the safe custody of the above share beyond one week from this date" This *pukka* receipt was given by the seller's broker to the plaintiff's broker, who handed it to the plaintiff, and the latter thereupon (in accordance with the practice in Bombay) paid the price of the shares. No fresh certificate was issued by the company to the plaintiff, but his name was endorsed by the company on the existing certificate as transferee He was also duly registered as transferee in the books of the company. It was subsequently discovered that, by reason of a previous transfer of the said three shares having been forged, the plaintiff's vendor had no title, and by a decree in a suit filed by the real owner of the shares the plaintiff was ordered to give them up. He thereupon filed this suit to recover the value of the shares from the company, contending that by their *pukka* receipt the company had represented to him that he was obtaining shares in the company, and that upon that representation he had paid for them, and that the company were estopped from denying that he was entitled to them *Held* that the company were not [illegible]

2 MEETINGS AND VOTING.

—*Articles of Association—General meeting of shareholders—Proxies—Qualification of proxy—Memorandum of Association—Alteration of Memorandum of Association—Act XII of 1895*—The right of a shareholder to vote by proxy depends on the contract between himself and his co-shareholders, and, where parties have a right depending on the contract between them and other parties, then [illegible]

conditions, *viz.*, that the proxy should be a shareholder at the date of his appointment and also at the date when he acted By a power-of-attorney dated the 14th October, 1881, some of the shareholders in the above company authorized and appointed certain specified persons "and all persons who at any time during the continuance of these powers-of-attorney may be partners in the firm of Messrs Wallace & Co., of Bombay, however that firm may be constituted . ... and in the absence from Bombay" of all the said persons, "then the person or persons for the time being holding the procuration of the said firm, and managing the said business, jointly and each of them severally" to vote as proxy for them at meetings of the above company On the 20th March, 1889, *M* became a shareholder in the company, and on the 1st April, 1889, he began to manage the business of Wallace & Co, holding its procuration. Under the above power he voted as proxy at meetings of the company held in 1902 for the purpose of altering the Memorandum of Association. *Held* that, not having been a shareholder [illegible]

CORPORATION, LIMITED (1902)
I. L. R., 27 Bom., 113

3 WINDING UP.

—Liability of Directors and Officers— *Indian Companies Act (VI of 1882), ss. 77, 136, 173, 214—Directors of a company, misappropriation by—Power of Court to make an order under s 214 of the Companies Act, rendering all the Directors jointly liable for misappropriation—Jurisdiction of District Court to wind up a company—Misfeasance and nonfeasance—Liability of individual Directors.*—S. 214 of the Indian Companies Act of 1882 gives a summary remedy only against such Directors or other officers of a company as have been personally guilty of some act of misfeasance, and does not give the Court power to make an order against the Directors *en masse* for all acts of misfeasance without any specific finding against the individuals who are actually responsible for the particular acts of misfeasance, as contemplated by that section. *Trevor* v. *Whitworth (1887), L. R., 12 A. C., 409; In re National Funds* [illegible]

ASHUTOSH GOSWAMI (1902)
I. L. R., 29 Calc., 688

COMPENSATION—CIVIL CASES.

See APPEAL—ORDERS.
I. L. R., 24 Mad., 62

See BENGAL TENANCY ACT, s 155
I. L. R., 30 Calc., 1063

See CATTLE TRESPASS ACT (I OF 1871), s 22 . 5 C. W. N., 32

See EJECTMENT, SUIT FOR.
I. L. R., 29 Calc., 871

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES
7 C. W. N., 152

See LANDLORD AND TENANT—BUILDINGS ON LAND, ETC, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS.

COMPENSATION—CIVIL CASES— *concluded.*

See Limitation Act, 1877, Sch II, Art 42 . . I. L. R., 24 All., 146

See Registrar of High Court—Sale by Registrar . 5 C. W. N., 593

See Sale in Execution of Decree—Errors in Description of Property sold . . I. L. R., 29 Calc., 370

——claim for—

See Limitation Act, 1877, Sch II, Arts 62, 97 . . I. L. R., 25 Bom., 593

——for buildings, on ejectment of tenant—

See Landlord and Tenant—Ejectment—Notice to quit. [6 C. W. N., 134

——for libel or slander—

See Limitation Act, 1877, Sch II, Arts. 24 and 25 . I. L. R., 24 All., 368

——for wrongful distraint—

See Bengal Tenancy Act, ss 121, 122, 140 . . I. L. R., 28 Calc., 364

See Limitation Act, 1877, Sch. II, Art 28 . . . 7 C. W. N., 728

——misdescription of property—

See Practice—Civil Cases—Sale by Registrar . I. L. R., 29 Calc., 420

——on acquisition of land—

See Land Acquisition Act, 1870. [I. L. R., 28 Calc., 146

See Land Acquisition Acts (XVIII of 1885 and I of 1894) [I. L. R., 30 Calc., 801

See Land Acquisition Act (I of 1894) [I. L. R., 28 Calc., 685; 7 C. W. N., 130

See Land Acquisition Act (I of 1894)—

ss. 11, 18, 31, and 33, [7 C. W. N., 538

s 23, . I. L. R., 28 Calc., 152

s. 30; . I. L. R., 26 Mad., 371

ss 30 and 53, I. L. R., 25 All., 133

ss 31 and 32, I. L. R., 24 All, 189

See Zanzibar . L. R., 28 I. A., 121

COMPENSATION—CRIMINAL CASES.

COMPENSATION—CRIMINAL CASES —*concluded.*

See False Charge. [I. L. R., 29 Calc., 479

(a) For Loss or Injury caused by Offence

1.—Expenses of prosecution—*Criminal Procedure Code (Act V of 1898), s 545—Order for payment of expenses of prosecution out of fine—Court-fees Act (VII of 1870), s 31—Re-pay-*

were levied under s 31 of the Court-fees Act as Court-fees paid by the complainant, and R10 under s. 545 of the Code of Criminal Procedure for two fees of R5 each paid by the complainant to the medical officer for a certificate and for giving evidence in the case Objection having been made to the recovery of these sums, the case was referred to the High Court for orders *Held* that the levy of Court-fees was warranted by s. 31 of the Court-fees Act, which is not modified by s. 545 of the Code of Criminal Procedure. *Held also* that the Deputy

ant out of the fine levied from the accused, and not in addition to it QUEEN-EMPRESS *v* YAMANA RAO (1900). . . I. L. R., 24 Mad., 305

2.—Imprisonment in default—*Order of payment of compensation and imprisonment in default of such payment—Legality of such order—Compensation recoverable as fine—Code of Criminal Procedure (Act V of 1898), ss 250, 386, 387, 388 and 389.*—A Magistrate passed an order, under s 250 of the Code of Criminal Procedure, directing the complainant to pay compensation in a certain sum, and he further directed that "if the compensa-

But, in regard to an order of imprisonment in such a case, s 250, proviso (2), declares that "if the compensation cannot be recovered, simple imprisonment may be awarded for such term not exceeding 30 days." The alternative (imprisonment) therefore can only be awarded if compensation cannot be recovered LAL MAHMUD SHAIK *v.* SATCOWRI BISWAS (1900) . . . I. L. R., 28 Calc., 164

(b) To Accused, on Dismissal of Complaint.

3.—Imprisonment in default—*Code of Criminal Procedure (Act V of 1898), s 250—Com-*

COMPENSATION—CRIMINAL CASES —*continued.*

(*b*) To Accused, on Dismissal of Complaint—*continued*

pensation for vexatious accusation—Imprisonment in default of payment of compensation—Simultaneous order.—It is only after an attempt has been made to realize the compensation awarded that a Magistrate is competent to pass an order of imprisonment for default A simultaneous order of imprisonment in default of payment of compensation is illegal. Priya Nath Bose *v.* Roy Basanta Kumar Singh (1900) . . 5 C. W. N., 213

4 ———— *Code of Criminal Procedure (Act V of 1898), s 250—Compensation for frivolous and vexatious accusation, objection against, failure to record and consider—Simultaneous order of imprisonment in default of compensation.*—A Magistrate ought to record and [illegible]

[5 C. W. N., 214

5. ———— *Code of Criminal Procedure (Act V of 1898), s 250 —False case—Imprisonment in default of payment of compensation—Summary proceeding—Conviction of offence under Penal Code (Act XLV of 1860), s. 211*—It is only if the compensation ordered to be paid under s. 250, proviso (2), of the Code of Criminal Procedure cannot be recovered that imprisonment can be awarded; therefore an order of imprisonment passed before any attempt is made towards recovery of the sum ordered to be paid as compensation, is bad. S 250 of that Code does not contemplate that compensation shall be awarded because a case is found to be false, but where the Magistrate is satisfied that the accusation is frivolous and vexatious The words "frivolous and vexatious" in the section indicate an [illegible]

[I. L. R., 28 Calc., 251

[The above case, No. 5, has been overruled by a Full Bench—see case No 8 in column 208, *post*]

6. ———— *Criminal Procedure Code (Act V of 1898), ss. 250, 388 (2)—Compensation in respect of vexatious complaint—Sentence of imprisonment on non-production of sureties and on complainant's plea of inability to pay—Legality*—A Deputy Magistrate, having held that a complaint was vexatious, ordered the complainant to pay compensation under s 250 of the Code of Criminal Procedure. He recorded the following order:

COMPENSATION—CRIMINAL CASES —*continued*

(*b*) To Accused, on Dismissal of Complaint—*continued.*

"The complainant is unable to produce any sureties, and pleads inability to pay the compensation. He is awarded 30 days' simple imprisonment." No [illegible]

trate cannot make an order for imprisonment on the mere intimation by the person who is directed to pay the compensation that he is unable to do so. Under s 388 (2), the issue of a warrant for the levy by distress of the amount awarded as compensation is a condition precedent to the carrying out of the sentence of imprisonment. In the matter of Byravalu Naidu (1902)

[I. L. R., 26 Mad., 127

[illegible]

Code of Criminal Procedure; and, where a case has been instituted in consequence of a complaint made to a Village Magistrate, who sent a report to the police, who submitted a charge sheet, the person who com[illegible]

8.—Order in what cases may be made—*Accused, order for payment of compensation to—Case which is false as well as frivolous or vexatious—Criminal Procedure Code (Act V of 1898), s.* [illegible]

9.—Order when to be made—*Criminal Procedure Code, s. 250—Frivolous accusation—Award of compensation to accused—Such award to be made by the order of discharge or acquittal, and not by a separate order*—When a Magistrate, on finding a complaint to be frivolous or vexatious, thinks it right to award compensation to the complainant, he must do so by his order of discharge or acquittal. Where a Magistrate made such an order in a separate proceeding after the accused had been discharged, it was *held* that his order was not merely irregular, but without jurisdiction In the matter of the complaint of Safdar Husain (1903)

[I. L. R., 25 All., 315

COMPENSATION—CRIMINAL CASES —*continued*

(*b*) To Accused, on Dismissal of Complaint—*continued*

10.—Police officer—*Criminal Procedure Code (Act V of 1898), ss 250, 4 (h)—Compensation for frivolous and vexatious accusation—Information given by a police constable, whether comes within s 250—Complaint*—S 250 of the Code of Criminal Procedure does not apply to a case instituted [illegible]

11.——————*Criminal Procedure Code (Act V of 1898), ss 4 (h), 250—Complaint—Report of police officer—Complaint by a police officer in a non-cognizable case—False complaint*—There is no section in the Criminal Procedure Code which empowers a police officer to make, on his own motion, any report to a Magistrate in a non-cognizable case; hence, where he files a formal complaint in such a case, he cannot be said to 'make a report,' and his complaint falls within the definition of 'complaint' in s. 4 (*h*) of the Criminal Procedure Code, 1898 Where a police officer appears before a Magistrate and makes a formal complaint of a non-cognizable offence, which is found to be false, the Magistrate can order him, under s 250 of the Criminal Procedure Code, to pay compensation to the accused. King-Emperor v Sada (1901)

[I. L. R., 26 Bom., 150

12.——————*Criminal Procedure Code (Act V of 1898), s 250—No power to order a police-* [illegible] *sation*— [illegible] officer, [illegible] under s [illegible] That sec [illegible] of the old Act and s 250 of the present Act Bahadur Ali v Nur Mahomed (1902)

[7 C. W. N., 206

13.—Security to keep the peace—*Criminal Procedure Code (Act V of 1898), s 250—Application for an order that a person should give security to keep the peace—Refusal of application—Compensation under s 250 of Criminal Proce-* [illegible]

COMPENSATION—CRIMINAL CASES —*concluded.*

(*b*) To Accused, on Dismissal of Complaint—*concluded*

meaning of s 250 of the Code. *Queen-Empress* v. *Lakhpat (1893), I L. R, 15 All, 365*, followed. In re Govind Hanmant (1900)

[I. L. R., 25 Bom., 48

COMPLAINANT.

See Defamation—Imputation on a Wife.
[I. L. R., 25 Bom., 151

——absence of—

See Complaint—Dismissal of Complaint—Effect of Dismissal.
[I. L. R., 28 Calc., 102

——rights of—

See Complaint—Institution of Complaint. . I. L. R., 29 Calc., 410

COMPLAINT.

See Sanction for Prosecution—When Sanction may be granted
[5 C. W. N., 254

——conviction of offence not specified in complaint—

See Conviction . 5 C. W. N., 296

——dismissal of complaint—

See Compensation—Criminal Cases—To Accused, on Dismissal of Complaint.

See Discharge of Accused.

See False Charge
[I. L. R., 29 Calc, 479

——disposal of complaint—

See Criminal Proceedings
[I. L. R., 26 Bom., 552

——effect of Magistrate's disregard of offences actually complained of—

See Criminal Proceedings.
[5 C. W. N., 252

——institution of complaint, and necessary preliminaries—

See Adultery . I. L. R., 29 Calc., 415

See Contempt of Court—Penal Code, s 174 . . . 5 C. W. N., 131

COMPLAINT—*continued.*

——record of complaint—

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS ; . 6 C. W. N., 840

——revival of complaint—

See CRIMINAL PROCEDURE CODE, s. 437. [6 C. W. N., 163

1. INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.

1.—Bigamy—*Criminal Procedure Code, s. 198—Act XLV of 1860 (Indian Penal Code), s. 495—Prosecution started at the instance of the second husband's brother—"Person aggrieved."*—*Held* that, in respect of a prosecution for bigamy, the brother of the second (bigamous) husband of the accused was not a "person aggrieved" within the meaning of s. 198 of the Code of Criminal Procedure. *Queen-Empress v. Bai Rukshmoni (1886), I L. R., 10 Bom., 340,* followed. EMPEROR *v.* IMTIAZAN (1902) . . . . . I. L. R., 25 All., 132

2. —— ——*Criminal Procedure Code, s. 198—Act XLV of 1860 (Indian Penal Code), ss. 494 and 498—Jurisdiction*—The husband of a woman who had left him laid a complaint before a Magistrate, alleging facts which seemed to constitute the offence provided for by s. 498 of the Indian Penal Code. In the course of the inquiry consequent upon this complaint, it appeared that an offence falling under s. 494 of the Code had been committed, and the Magistrate accordingly made an order of commitment under s. 494 of the Code. *Held* that such commitment was not illegal. It was not necessary that the complainant should specify precisely the section under which the person complained against should be charged, and he had laid before the Magistrate matter which, if proved, would be sufficient to warrant a commitment under s. 494. *In the matter of Upala Bewa (1878), I C. L. R., 523,* approved. EMPEROR *v.* ALLI (1902) . I. L. R., 25 All., 209

3.—"Complaint"—*Criminal Procedure Code (Act V of 1898), ss. 4, cl. (h), 190, cl. (c)—Complaint, what—Proceedings instituted on Magistrate's responsibility.*—Where, in a petition presented to a Magistrate, a person alleged that he had been taken to a certain place and there made to sign a paper, but also expressly stated that he did not wish to prosecute. *Held* that there was no complaint, within the terms of the definition in s. 4, cl. (h), of the Criminal Procedure Code, and that no process could be issued upon the petition. Proceedings taken upon such a petition cannot be justified as having been instituted by the Magistrate on his own responsibility under s. 190, cl. (c), of the Code of Criminal Procedure. BHARAN SINGH *v.* HALTHAN MANDAL (1902) . . . . . 6 C. W. N., 926

4.—Court of Wards—*Petition to Collector against subordinate officer of Court of Wards—Dismissal of petition—Witnesses, opportunity to call—Sanction to prosecute—False charge—Penal Code (Act XLV of 1860), s. 211—Code of Criminal Procedure (Act V of 1898), ss. 4 (h) and 195.*—A

COMPLAINT—*continued.*

1. INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES—*continued.*

petition to the Collector, as the superior officer of the Court of Wards, directed against one of his official inferiors, a subordinate officer of the Court of Wards cutchery, asking the Collector, as the head of the department, to redress the grievances of the petitioner, is not a "complaint" within s. 4, cl. (h), of the Code of Criminal Procedure. Where, on such a petition being presented, the Collector saw the petitioner and got him to repeat the statement made in the petition on oath, and, dealing with it judicially as if it were a complaint, dismissed it, without giving the petitioner an opportunity of calling his witnesses, and ordered his prosecution under s. 211 of the Penal Code: *Held* that the order for the prosecution of the petitioner under s. 211 of the Penal Code should be set aside, as the Collector was not justified in arbitrarily turning a departmental complaint into a criminal complaint, and that, if he had been justified in taking the course that he did, he should have given the petitioner an opportunity of calling his witnesses and proving his allegations. JAGOBUNDHOO KARMAKAR *v.* EMPEROR (1902) . . I. L. R., 30 Calc., 415

5.—Defamation—*Indian Penal Code (Act XLV of 1860), s. 500—Defamation—Criminal Procedure Code (Act V of 1898), s. 198—Person aggrieved—Defamation of subordinate officers of Municipality—Complaint by President—Maintainability.*—A newspaper published articles which, for the purposes of the point of law to be determined, were assumed to be defamatory. These related to the conduct of certain subordinate officers of the Madras Municipal Commission. A complaint was lodged by the President of the Commission in respect of the alleged defamation, it being contended on behalf of the complainant that, inasmuch as, by the Madras Municipal Act, the President is responsible for the efficient discharge of their duties by his subordinate officers, his conduct and administration had been impugned by the articles. *Held* that, assuming for the purposes of the question under consideration that the statements complained of were defamatory of the subordinate officers of the Municipal Health Department, they were not defamatory of the complainant; and that the complainant was not a "person aggrieved" within the meaning of s. 198 of the Code of Criminal Procedure. BRATCHAMP *v.* MOORE (1902) [I. L. R., 26 Mad., 43

6.—Duty of Magistrate—*Criminal Procedure Code (Act V of 1898), ss. 190 (c), 191—Cognizance of offence on personal knowledge or information—Trial of case by same Magistrate—Procedure*—When a Magistrate takes cognizance of a case under cl. (c) of s. 190, Criminal Procedure Code, he is bound to take further proceedings under s. 191, Criminal Procedure Code; and his omission to do so renders his proceedings illegal. IN THE MATTER OF ABBAR MONIR (1901) . . . . 6 C. W. N., 203

7. —— ——*Criminal Procedure Code (Act V of 1898), s. 203—Magistrate having power to receive complaint, jurisdiction of, to finally dispose of the same—District Magistrate,*

COMPLAINT—*continued.*

1. INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES—*continued.*

jurisdiction of, to issue process.—A Magistrate having power to receive a complaint has power to deal with it finally, and it is his duty to do so, and a

8.—Police officer—*Complaint to police—Report by police—Case ordered to be entered as true by Magistrate—Judicial inquiry—Right of complainant to be examined and to have his case tried—Criminal Procedure Code (Act V of 1898), ss. 173,*

receipt of his report he declined to interfere in the

KULDIP SAHAI v. BUDHAN MAHTON (1901) [I. L. R., 29 Calc., 410

9.————*Criminal Procedure Code (Act V of 1898), ss 4 (h), 250—Report of police officer—Complaint by a police officer in a non-cognziable case—False complaint—Compensa-*

definition of 'complaint' in s 4 (h) of the Criminal Procedure Code, 1898. Where a police officer appears before a Magistrate and makes a formal

(1901) . . . . I. L. R., 26 Bom., [illegible]

10.—Rioting—*Criminal Procedure Code (Act V of 1898), ss. 190, 528—Cognizance of offence against persons accused but not sent up for trial—Refusal by trying Magistrate to issue processes against such accused persons—Transfer by District Magistrate of case—Warrants, issue of, against accused not sent up—Pending case—Jurisdiction.*—Where several persons were accused of rioting, and only one of the accused was sent up by the police and convicted of the offence, and the trying Magistrate, on application made for summoning the others, refused to summon them, and the District Magistrate transferred the case to his own file and directed the

COMPLAINT—*continued*

1. INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES—*concluded.*

issue of warrants against the accused persons originally charged but not sent up for trial : *Held* that the

to transfer the case to his own file under s. 528 of the

Magistrate had jurisdiction to take cognizance of the case as against the other accused persons under s 190 of the Code AYEN MAHMAD AKAND v. KING-EMPEROR (1901) . . . 5 C. W. N., 488

2. DISMISSAL OF COMPLAINT.

(a) POWER OF, AND PRELIMINARIES TO, DISMISSAL.

11.—Examination of complainant—*Criminal Procedure Code (Act V of 1898), ss. 202, 203—Complaint before District Magistrate—Examination of complainant—Order for local inquiry to a Magistrate not competent to take cognisance of the complaint, legality of—Determination of complaint—Penal Code (Act XLV of 1860), s 211—False charge, prosecution for making—Opportunity given to complainant to establish the truth of his complaint—Preliminary inquiry, whether necessary.*—Where a Magistrate dismissed a complaint after hearing complainant and considering the results of an investigation held under s. 202:

claimed to have all his witnesses examined by a competent Magistrate : *Held* that ss 202 and 203 do not give that right to a complainant whose story is disbelieved by the Magistrate In a prosecution under s. 211, Indian Penal Code, where the complaint on which the prosecution was founded was dismissed after hearing and the taking of such steps

12. ———— *False charge—C... nal Procedure Code (Act V of*

COMPLAINT—*continued.*

2. DISMISSAL OF COMPLAINT—*continued.*

(*a*) POWER OF, AND PRELIMINARIES TO, DISMISSAL—*concluded.*

ss. 156, 159, 200, 202, 203—Penal Code (Act XLV of 1860), s. 211—Jurisdiction of Magistrates—A complaint was made to a Magistrate, who, without examining the complainant, sent the petition of complaint, under s 156 of the Code of Criminal Procedure, to the police, for inquiry, and, upon receipt of the police report, directed a Sub-Deputy Magistrate to make a preliminary inquiry into the case under s 159 of the Code, and, on receipt of his report, the Magistrate, not being satisfied with it, cross-examined the complainant and some of his witnesses, examined some witnesses sent up by the police, and then dismissed the complaint under s. 203 of the Code, and directed the prosecution of the complainant under s 211 of the Penal Code. *Held* that the order dismissing the complaint was illegal, the Magistrate having no jurisdiction to deal with the case or dismiss it under s. 203 of the Criminal Procedure Code without complying with the requirements of the law as laid down in ss 200 and 202 of that Code LOKENATH PATRA *v* SANTARI CHARAN MANNA (1903)

[I. L. R., 30 Calc., 923 : s.c., 7 C. W. N., 525.

(*b*) EFFECT OF DISMISSAL.

13.—Dismissal for absence of complainant—*Revival of and further inquiry into case by same Magistrate—Review—Code of Criminal Procedure (Act V of 1898), ss. 259, 369, 437 and 438.*—Complainant filed a complaint under ss. 341, 323, 447 and 426 of the Penal Code. The District Magistrate, after recording the statements of the complainant, ordered the issue of a summons to the accused, returnable on the 19th April. On that day the complainant was absent when the case was called on. The District Magistrate dismissed the case under s. 259 of the Code of Criminal Procedure. Subsequently, on the application of the complainant, the District Magistrate revived the case and made it over to an Honorary Magistrate for trial. *Held* that the terms of s 369 of the Code of Criminal Procedure must be read as controlled by s 437 of that Code. S. 437 does not limit the power of a District Magistrate to make an order [illegible] Magistrate to [illegible] h an order [illegible] passed by a [illegible] bar to a [illegible] iry into a [illegible] passed by [illegible] SHEIKH [illegible] (1900) . . I. L. R., 28 Calc., 102

14.—Revival of proceedings—*Discharge of accused—Re-arrest of accused without previous order of discharge being set aside—Code of Criminal Procedure (Act V of 1898), ss 252, 253, 403, 436 and 437—Indian Post Office Act (VI of 1898), s. 52*—There is no express provision in the Code of Criminal Procedure to the effect that the dismissal of a complaint shall be a bar to a fresh complaint being entertained so long as the order of dismissal remains unreversed. An accused person was arrested on the charge of having stolen a registered letter from the Post Office, and was brought up before a Bench of Presidency Magistrates, charged with offences under s. 381 of the Penal Code and s 52 of the Post Office Act, 1898 He was discharged on the same day, the Bench considering the evidence insufficient. Subsequently the accused was re-arrested on substantially the same charge, and was committed by the Chief Presidency Magistrate for trial upon further and fresh evidence Upon an application by the accused, to have the order of commitment discharged on the ground that the Chief Presidency Magistrate had no jurisdiction to make the commitment, as the previous order of discharge had not been set aside: *Held* that the commitment was good. *Nilratan Sen* v. *Jogesh Chandra Bhattacharjee (1896), I. L. R., 23 Calc., 983,* distinguished. *Grish Chunder Roy* v. *Dwarka Dass Agarwallah (1897), I. L. R., 24 Calc., 529,* dissented from *Opoorba Kumar Sett* v. *Probod Kumary Dassi (1893), 1 C. W. N., 49,* followed. QUEEN-EMPRESS *v.* DOLEGOBIND DASS (1900)

[I. L. R., 28 Calc., 211: s.c., 5 C. W. N., 169

15.——————*Criminal Procedure Code (Act V of 1898), s. 203—Refusal by Magistrate to take cognizance of case—Subsequent trial by him*—A complaint was laid in the Court of a Town Magistrate, charging certain persons with having committed offences under the Registration Act. The Town Magistrate dismissed the complaint on the ground that sanction, which he deemed to be necessary, had not been obtained. The complainant obtained sanction, and thereupon the Town Magistrate proceeded with the case and convicted the accused. On appeal, the Deputy Magistrate, while agreeing that the accused were guilty, reversed the conviction on the ground that, inasmuch as the Town Magistrate had once thrown out the complaint under s 203 of the Code of Criminal Procedure, he could not subsequently entertain it. On the case [illegible] (1900) . . . I. L. R., 24 Mad., 337

16. ——————— *Complaint accusing several persons—Proceedings, institution of, against one—Conviction—Refusal by Magistrate to proceed against other persons accused—Further inquiry—Notice—Criminal Procedure Code (Act V of 1898), ss. 203 and 437.*—A complaint was made to a Magistrate, charging several persons with the commission of an offence The Magistrate instituted proceedings only against one of them, and after his conviction refused to issue processes against the others. On application by the complainant, the

COMPLAINT—*concluded.*

2. DISMISSAL OF COMPLAINT—*concluded.*

(*b*) EFFECT OF DISMISSAL—*concluded.*

Sessions Judge, under s 437 of the Criminal Procedure Code, directed a further inquiry into the matter without notice to the other persons accused *Held* that the refusal by the Magistrate to issue processes was an order of dismissal of the complaint within

dure Code directing a further inquiry into a matter which has terminated in the summary dismissal of a

COMPOSITION-DEED.

See INSOLVENT ACT (11 AND 12 VICT., c. 21), ss. 9 AND 24
[I. L. R., 26 Bom., 765

COMPOUNDING OFFENCE.

—*Compoundable offence—Whether the compounding of an offence enures to the acquittal of all the parties complained against*—If, in the case of a compoundable offence, the complainant intimates to the Court that he has compounded it and desires to withdraw his complaint, the order passed by the Magistrate allowing the withdrawal is in respect of the offence and not solely in regard to the persons

Where, out of several persons named in the complaint, the Magistrate issued process against one, and

COMPROMISE.

COMPROMISE—*continued.*

See DECREE—ALTERATION OR AMENDMENT OF DECREE . 7 C. W. N., 880

See ESTOPPEL—ESTOPPEL BY CONDUCT
[I. L. R., 29 Calc., 577

See EXECUTION OF DECREE—EXECUTION ON OR AFTER AGREEMENTS OR COMPROMISES.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—COMPROMISE
[I. L. R., 25 All., 48

See REGISTRATION ACT, 1877, s 17.
[I. L. R., 25 Mad., 553

——of suit, power to make—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION
[I. L. R., 24 Mad., 326

See COUNSEL . . 6 C. W. N., 82

——out of Court—

See CIVIL PROCEDURE CODE, s 244—QUESTIONS IN EXECUTION OF DECREE
[7 C. W. N., 54

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.

1.—Compromise in previous suit—A compromise entered into by the parties in a previous

general rule as mentioned therein. RAMESHWAR PROSAD SINGH *v.* LACHMI PROSAD SINGH (1903)
[7 C. W. N., 638

2—Joint family—*Joint Hindu family—Effect of conversion of member of joint Hindu family to Mahomedanism—Regulation VII of 1832, s. 9—Title taken under compromise between persons having mutually exclusive claims*—In the year 1845 one Ratan Singh, who at that time formed with his son Daulat Singh a joint Hindu family, possessed as such of considerable property, both movable and immovable, became converted to Mahomedanism In 1851 Ratan Singh died, his son Daulat Singh having predeceased him, and such portion of the property as was situate in British India was taken over by the Court of Wards and held by them apparently on behalf of Raj

Kunwar executed a bond for a considerable sum of money in favour of Jai Chand, the father-in-law of her daughter, Mewa Kunwar Sen Kunwar died in 1857, and Raj Kunwar in 1859 After the death

COMPROMISE—*continued.*

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—*continued.*

of these ladies three claimants to the property [illegible]

assigned to the daughters of Daulat Singh and 7½ annas to Khairati Lal; and in 1861 the partition of the property in accordance with the terms of the compromise was completed. In 1866 Chatar Kunwar died, and upon her death Mewa Kunwar successfully asserted her right by survivorship to the 4¼ annas which had been the share of her sister, and thus became possessed of the whole 8½ annas assigned by the compromise mentioned above to the daughters of Daulat Singh. Meanwhile, however, Jai Chand had brought a suit upon the bond given to him in 1857 by Sen Kunwar. Why this bond was originally executed did not appear, nor that there was evidence of any such legal necessity pressing upon Sen Kunwar as would have supported an incumbrance of more than her own life interest in the property. The final decree in this suit was obtained by Jai Chand in 1868, that is to say, after the surviving defendant, Mewa Kunwar, had been declared entitled to the entire 8½ annas share; and it was a decree based upon a confession of judgment by Mewa Kunwar. In satisfaction of this decree certain villages, part of the said 8½ annas share, were made over to the decree-holder, some of which, in turn, were sold by him to various vendees. On the suit by the sons of Mewa Kunwar to recover some of these villages on the ground that their mother had in them no more than a Hindu daughter's [illegible]

the property so becoming vested in Daulat Singh [illegible]

COMPROMISE—*continued.*

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—*continued.*

shown for the making of Sen Kunwar's bond or for the relinquishment by Mewa Kunwar of the villages which she made over to Jai Chand in satisfaction *of his decree upon that bond, the estate taken by* Jai Chand could not be more than that possessed by Mewa Kunwar, and on her death her sons were entitled to recover possession. *Abraham v. Abraham (1863), 9 Moo. I. A., 199, at page 237,* referred to. *Held* also that, although the findings in the case between Mewa Kunwar and her brother-in-law (N.-W. P. H. C. Rep., 1869, p. 62) could not be held to be *res judicata* in the present appeal, the judgment in that case could be used as evidence to the extent pointed out in the cases of *Ram Ranjan Chukerbutty v. Ram Narain Singh (1894), I. L. R., 22* [illegible]

3.—Minor—*Guardian of minor—Proper course to set aside a compromise decree—Appeal Adoption, suit to set aside—Guardians and Wards Act (VIII of 1890), ss. 47, 48—Civil Procedure Code (Act XIV of 1882), ss. 443, 622.*—When a compromise and a decree based upon it are sought to be set aside on the ground that the compromise was entered into by the guardian of a minor defendant without the leave of the Court having [illegible]

a separate suit, but not by an appeal from the compromise decree. *Biraj Mohini Dasi v. Chinta Moni Dasi (1901), 5 C. W. N., 877,* followed. S. 48 of the Guardians and Wards Act does not prevent a widow, who has been appointed by the District Judge under that Act, guardian of a minor as her husband's adopted son, from maintaining a suit for a declaration that the minor was not the adopted son of her husband. RAKHAL MONI DASSI *v.* ADWYTA PROSAD ROY (1903)

[I. L. R., 30 Calc., 613 : s.c., 7 C. W. N., 419

4.—Specific performance—*Specific performance, suit for—Civil Procedure Code (Act XIV of 1882), s. 244—Right of suit—Limitation Act (XV of 1877), Sch. II, Art. 113—Estoppel*—When a previous suit for *khas* possession was compromised and dismissed, defendant agreeing to execute a *kabuliyat* in plaintiff's favour; and plaintiff sued again for specific performance of the contract to execute the *kabuliyat*, there being no direction for its execution in the decree in the previous suit: *Held* that the present suit was not barred under *s. 244 of the Civil Procedure Code.* Where, after [illegible] *kabuliyat,* [illegible] was entitled [illegible] plaintiff [illegible] defendant

COMPROMISE—*continued.*

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—*concluded.*

had forfeited his tenancy by such assignment: *Held* that plaintiff had not acted in contravention of the compromise, and was not precluded from suing on that compromise CHUNI LAL DUTTA *v.* HIRA LAL DUTTA (1902) . . . 7 C. W. N., 158

2 REMEDY ON NON-PERFORMANCE OF COMPROMISE

5.—*Specific Relief Act (I of 1877), s. 23, cl. (c)—Family arrangement—Compromise of doubtful rights—Suit to enforce compromise by a person not party thereto—Person beneficially entitled under the compromise.*—A suit to set aside a deed of partition between the members of the same family was compromised. By the deed of compromise it was stipulated that certain of the parties to the compromise should pay to the plaintiff R5,000. The plaintiff was not a party to the suit or compromise. *Held* that she, being a person beneficially interested under the compromise, was entitled to sue for the recovery of the money, if the compromise was a compromise of doubtful rights PROTAP NARAIN MUKERJEE *v.* SARAT KUMARI DEBI (1900) [5 C. W. N., 386

3 COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

6.—Arbitration—*Civil Procedure Code (Act XIV of 1882), ss. 375, 506, and 523—Arbitrator—Agreement to refer to arbitrator—Suit—Adjustment of suit, within the meaning of s 375—Agreement not in writing*—Where a party to an agreement has petitioned to refer matters in dispute to arbitration: *Held* that the Court has no power to make a decree under s 375 "that the agreement to refer to arbitration be recorded, and that in terms of the said agreement the suit be referred to an arbitrator with all such powers and authorities as are vested in arbitrators under the provisions of the Civil Procedure Code, and that the arbitration be finished ... from the date on which the decree

[illegible]

refer to arbitration in a pending suit ... *Hassan (1903), I. L. R., 29*

[illegible]

COMPROMISE—*continued.*

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued.*

tion could under no circumstances be treated as an adjustment of the suit, as contemplated by s. 375 TINCOWRY DEY *v* FAKIR CHAND DEY (1902) [I. L. R., 30 Calc., 218

7. ———— *Civil Procedure Code (Act XIV of 1882), s. 375—Compromise or adjustment of suit—Submission and award equivalent to adjustment, and may be recorded under the section—Decree passed without the suit appearing on the list for hearing—Practice—Procedure.*—Where a suit is referred by the parties to arbitration, and an award is made, the submission and award ... s. 375 of the Civil Procedure

[illegible]

8.—Endowment—*Hindu law—Mirasi rights attached to Devastanams—Suit against office-holder—Compromise consenting to sale of office and its emoluments—Decree in terms of compromise—Execution proceedings—Invalidity of compromise opposed to public policy—Right of Court to refuse to execute*—The sale of an office attached to a temple, involving services of a personal nature and entitling the holder of it to receive emoluments, is ... and will not be recognised or

[illegible]

to its emoluments should be sold in satisfaction of ... A decree was passed in terms of

[illegible]

was based on an ... Court had merely adopted the contract, the Court must be taken to have adopted it with all its incidents. By s 375 of the Code of Civil Procedure, the Court had no jurisdiction to pass a decree on a compromise unless it was a lawful compromise Any terms of a contract which are opposed to public policy are invalid, and will therefore not be enforced by the Court, and so far as a decree embodies unlawful terms of a compromise it is inoperative and will not be enforced. *Nagappa* v. *Vencata Rau, I. L. R., 24 Mad., 265,* referred to. LAKSHMANASWAMI NAIDU *v.* RANGAMMA (1902) [I. L. R., 26 Mad., 31

9.—Extraneous matter—*Civil Procedure Code (Act XIV of 1882), s 375—Compromise decree*—A decree passed on a compromise cannot

COMPROMISE—*continued*

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued.*

be regarded as *ultra vires* simply because it goes beyond the subject-matter of the suit and contains other conditions The other conditions, if they are the considerations for the compromise of the subject-matter of the suit, must be incorporated in the decree; but, if the other conditions are independent of it, they may be regarded as surplusage. PURNA CHANDRA SARKAR *v.* NIL MADHUB NANDI (1901)

[5 C. W. N., 485

10.—Minor—*Compromise on behalf of minor—Compromise of execution proceedings—Civil Procedure Code (XIV of 1882), s. 462—Sanction of Court—Form of sanction—Minority—Burden of proof.*—The plaintiffs, Shidappa and Basappa, both of whom were alleged to be minors, sued in 1895, by their mother and next friend, for partition, and obtained a decree on the 21st December, 1897. They subsequently applied for execution, but on the 13th June, 1898, Shidappa, describing himself as then of age, and Basappa, by his mother and next friend, got this application struck off the file, on the ground that they had compromised with the defendant and that the decree was satisfied. The compromise (*fárkhat*) was executed by the first plaintiff himself, who, as alleged in the *fárkhat*, had then at-

s. 462 of the Civil Procedure Code. The lower Court held (1) that both plaintiffs were minors, and (2) that the compromise had not been sanctioned as required by s. 462. It therefore set aside the compromise, and passed a decree for the plaintiffs. On appeal by the defendant: *Held* that, Shidappa (plaintiff No. 1) having described himself both in the former suit and in the *fárkhat* as of age, the burden of proof now lay upon him to show that he was a minor, and that he had failed to do so. But *held* also (dismissing the appeal) that, Basappa (plaintiff No. 2) being a minor, the *fárkhat* required the sanction of the Court under s. 462 of the Civil Procedure Code. That sanction had not been given. The Court had not before it the materials necessary to enable it to arrive at a judicial conclusion with respect to the compromise. It did not appear that the terms of the *fárkhat* were before it, or any evidence as to its propriety or reasonableness. S. 462 of the Civil Procedure Code, therefore, had not been complied with. The form of expression used for the purpose

COMPROMISE—*continued.*

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued.*

dure Code applies to a compromise of execution proceedings. VIRUPAKSHAPPA *v.* SHIDAPPA (1901)

[I. L. R., 26 Bom., 109

11.—Minor—*Civil Procedure Code (Act XIV of 1882), s. 462—Compromise on behalf of minor—Certificated guardian, authority of—Whether compromise, upon which decree given, requires Court's sanction—Construction and meaning of words—Leave of Court, nature of, if must be express—Leave, granted by certificated guardian, when valid — Registration — Decree, if can validate unregistered lease — Holder of invalid lease, acceptance of, by certificated guardian — Trespasser — Ejectment — Notice.*—S. 462, Civil Procedure Code, requires every person acting as a next friend or guardian for the suit to a minor to take the leave of the Court before entering into an agreement or compromise on his behalf, and no exception is made in the case of a certificated guardian. The policy of the law being to protect minors from being taken at a disadvantage by their guardians, the leave of the Court is required, not only in the case of such agreements as are entered into out of Court, but also in the case of agreements which are given effect to by a decree of the Court. The words "any agreement or compromise with reference to the suit," in the

leave of the Court must be express, and it must be arrived at upon the exercise of a judicial discretion as to the propriety of compromise in the interests of the minor. *Kalavati v. Chedi Lal (1895), I. L. R., 17 All., 531; Sarat Chandra Ghose v. Kartik Chander Mitter (1883), I. L. R., 9 Calc., 810,* relied on. Where a certificated guardian, acting as next friend to a minor in a suit, entered into a compromise with the defendant, without the Court's leave, whereby it was agreed that the defendant should obtain a *mokurari* lease in respect of certain lands belonging to the minor, and the Court gave a

to grant leases on behalf of the minor, the lease in question, not having been granted by a registered instrument, was invalid; and the compromise decree which the minor, under the express authority of the law, sought to avoid, could not be invoked as a substitute for a duly-registered lease. *Held* also that, the certificated guardian having accepted defendant as a tenant, the defendant could not be

COMPROMISE—*concluded*

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*concluded.*

considered a trespasser, the invalidity of the original lease and the compromise decree notwithstanding; and therefore could not lawfully be evicted without notice. LALA MAJLIS SAHAI *v.* NARAIN BIBI (1902) . . . . . . 7 C. W. N., 90

12.—Partition—*Civil Procedure Code, s. 373 —Suit for partition—Withdrawal of suit—Joint petition by parties praying that the suit might be struck off—Subsequent suit for partition barred.*—The plaintiff and the defendants in a suit for partition, having arrived at a compromise, presented to the Court a joint petition asking that the suit might be struck off (*kharij kardiya jawe*) The Court passed orders accordingly, in the terms of the petition, striking off the suit. The terms of the compromise were not, however, inserted in the decree, and ... tiff ... prop ... plain ...

[illegible]

[I. L. R., ... All., ...]

CONCUBINE

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—CONCUBINE.

CONCURRENT JUDGMENTS ON FACTS.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—CONCURRENT JUDGMENTS ON FACTS; SUBSTANTIAL QUESTIONS OF LAW. [I. L. R., 25 Mad., 215

See PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS

CONDITION.

——breach of—

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS

CONDITIONAL SALE.

See EVIDENCE—PAROL EVIDENCE. [I. L. R., 28 Calc., 256, 289

See MORTGAGE.

CONDUCT.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

CONFESSION.

——confessions of prisoners tried jointly—

See JOINDER OF CHARGES [5 C. W. N., 294

——confessions to Magistrate—

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER. [5 C. W. N., 864

1. CONFESSIONS SUBSEQUENTLY RETRACTED.

1.—*Evidence—Retracted confession—Evidence Act (I of 1872), s. 24*—A confession duly recorded and certified under s. 164 of the Criminal Procedure ...

[illegible]

2.—*Retracted confession, evidential value of, against maker and co-accused—Corroboration*—A retracted confession should carry practically no weight as against a person other than the maker; it is not made on oath, it is not tested by cross-examination, and its truth is denied by the maker himself ... other of the ... would be ... would be ... accomplice ...

[I. L. R., 28 Calc., 689: s.c., 5 C. W. N., 670

3.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made*—The prisoner, a young girl of 15, being ...

[illegible]

Held that, having regard to the circumstances under which the confession was made, and also to the fact that the confession was in material respects at

CONFESSION—*continued.*

1. CONFESSIONS SUBSEQUENTLY RETRACTED—*concluded.*

variance with the evidence for the prosecution, the conviction should be set aside. *Per* MACLEAN, C.J.—"If the prosecution story, taken as a whole, is false, the accused is entitled to an acquittal." MOTIJAN BIBEE *v.* CROWN (1902) . **3 C. W. N., 380**

2 CONFESSIONS TO MAGISTRATE

4.—**Admissibility**—*Evidence—Retracted confession—Evidence Act (I of 1872), s. 24*—A confession duly recorded and certified under s. 164 of the Criminal Procedure Code (Act V of 1898) is admissible in evidence against the person making it, unless shut out by the provisions of s. 24 of the Indian Evidence Act (I of 1872). A mere subsequent retraction of a confession which is duly recorded and

fessions *Imperatrix v Balya Dagdu, Cr Rul. No 3 of 1898*, dissented from *Reg v Balrant (1871), 11 B. H. C. R., 137*, followed QUEEN-EMPRESS *v.* BASVANTA (1900) . **I. L. R., 25 Bom., 168**

5.—**Police**—*Evidence—Confession of an accused while in custody of the police Duty of Magistrate when such confession is made—Sessions Judge, duty of—Criminal Procedure Code (Act V of 1898), s 164 (3)—Evidence Act (I of 1872), s. 21.*—When an accused person has been in custody of the police and has made a confession, it is important that the Magistrate, before recording such confession

6.—**Promise**—*Evidence Act (I of 1872), s. 24—Confession caused by promise—Village Magistrate—Person in authority—Appeal from conviction by jury—Misdirection.*—Two days after a dacoity had been committed in a certain village, T

said that if the confession was true it was enough to warrant the conviction of the accused. The jury

CONFESSION—*continued.*

2. CONFESSIONS TO MAGISTRATE—*concluded.*

returned a verdict of guilty, and the accused was sentenced. On an appeal being preferred on the ground of misdirection: *Held* that the Village Magistrate was a person in authority, within the meaning of s. 24 of the Evidence Act, and that, as the arrangement promised by him before the confession was made was obviously intended to be one that would save the accused from prosecution if he would confess, the confession was irrelevant under that section. Also, that the misdirection was a material and important one, likely to lead to an erroneous verdict, and that a new trial must take place. THANDRAYA MUDALY *v.* EMPEROR (1902)

I. L. R., 26 Mad., 38

7.—**Record**—*Criminal Procedure Code (Act V of 1898), s 164, sub-s. (3)—Evidence Act (I of 1872), s 80—Confession, recording of—Magistrate's certificate*—A confession, unless made in accordance with s. 164, Criminal Procedure Code, cannot be admissible as evidence under s 80 of the Evidence Act Where a confession made before a Magistrate

8.—**Witness**—*Statements of witnesses, recorded by Magistrate under s 164, Criminal Procedure Code—Recognizance of such witnesses to appear on the same day as when accused's statement recorded—Presumption that such witnesses were sent under custody—Accused to cross-examine them—Record to show such statements voluntarily made—Previous statement of a witness made to a Magistrate in the course of a judicial enquiry made evi-*

... recorded under s. 164, Criminal Procedure Code and ...

... assurance that their attendance and statement were voluntary, *Empress v. Jadab Das (1899), 4 C. W. N, 129; Bajrangi Lall v. The Empress (1899), 4 C. W. N., 49*, referred to and followed. Where the Sessions Judge ...

... C. W. N., 545

NFESSION—*concluded*

CONFESSIONS TO POLICE OFFICERS.

—*Admissibility—Police system of verification* a confession made to a police officer cannot be d against an accused person, a statement by a e officer to that effect should not be placed on Magistrate's record; also, a police officer should be permitted to depose that the accused has con-l to him, even though the terms of the confession ot allowed to be proved. The system of verifica-ntroduced by police circular condemned Em-R v. RADHE HALWAI (1902) 7 C. W. N., 220

CONFESSION OF PRISONERS TRIED JOINTLY.

—*Act I of 1872 (Indian Evidence Act), 0—Joint trial—Plea of guilty by some of ccused—Plea not accepted in order that their ssions might be considered against the other ed*—Where several accused persons are being jointly for the same offence, and some of them guilty, it is unfair to defer convicting those who

LICT OF LAWS

See ZANZIBAR . L. R., 28 I. A., 121

UGAL RIGHTS

See RESTITUTION OF CONJUGAL RIGHTS.

ENT

See ACQUIESCENCE

See HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—AUTHORITY. [I. L. R., 26 Mad., 627

occupier of house—

See COMMISSION—CIVIL CASES [6 C. W. N., 927

prisoner—

See SESSIONS JUDGE, JURISDICTION OF. [I. L. R., 26 Bom., 50

bequest—

See MAHOMEDAN LAW—WILL. [I. L. R., 26 Bom., 497

ENT DECREE

See APPEAL—DECREES. 5 C. W. N., 677

See DECREE—CONSENT DECREE.

CONSEQUENTIAL RELIEF.

See COURT-FEES ACT (VII OF 1870), SCH. II, ART. 17, CL. 3.

See DECLARATORY DECREE, SUIT FOR.

CONSIDERATION.

——agreement to continue joint must be *for*—

See PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION . . I. L. R., 28 Calc., 769

——failure of—

See LIMITATION ACT, SCH. II, ARTS. 62 AND 97 . I. L. R., 25 Mad., 396

——inadequacy of—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT (INEQUITABLE CONTRACTS). [I. L. R., 25 Bom., 126

s. 74—Penalty—Compound interest in lieu of simple—Act VI of 1899, s. 4.—In a suit for sale on a mortgage, a subsequent transferee of a portion of the mortgaged property, who was made a defendant, put the plaintiff to proof of his mortgage, and he failed to establish that the actual consideration for the mortgage was any more than about two-thirds of the consideration entered in the bond.

[I. L. R., 25 All., 159

CONSIGNOR AND CONSIGNEE.

See RAILWAYS ACT (IX OF 1890), s. 72 [I. L. R., 30 Calc., 257

CONSOLIDATION OF APPEALS.

See PRACTICE—CIVIL CASES—TEST CASE. [I. L. R., 29 Calc., 140

CONSPIRACY.

See ABETMENT . I. L. R., 24 Mad., 523

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—FALSE EVIDENCE . I. L. R., 25 Bom., 230

1.—Evidence—*Relevant fact—Evidence Act (I of 1872), s 10—Conspiracy, evidence of—Statements by an alleged conspirator to a third party, relevancy of*—Statements made by an alleged conspirator to a third party, suggesting that there had been a conspiracy between the plaintiff and others in connection with the forgery of an alleged will, are not relevant when such statements are used to prove (*a*) [illegible]

consists in a combination and agreement by persons to do some illegal act or to effect a legal purpose by illegal means, and the conspiracy is complete if two or more than two should agree to do an illegal thing. When it is shown that there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention may be proved both for the purpose of proving the existence of the conspiracy as also for showing that any such person was a party to it Conspiracy is not a substantive offence in India, but is incorporated in the law of abetment of offences In order to constitute the offence of abetment by conspiracy, there must be a combining together of two or more persons in the conspiracy, and an act or illegal omission must take place in pursuance of that conspiracy and in order to the doing of that thing. It is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused. Nor is it necessary that the abettor should concert the offence with the person who commits it It is sufficient, if he engages in the conspiracy in pursuance of which the offence is committed. KALIL MUNDA *v* KING-EMPEROR (1901)

[I. L. R., 28 Calc., 797

CONSTRUCTION OF STATUTES

See STATUTES, CONSTRUCTION OF

CONTEMPT OF COURT.

[illegible]

See CRIMINAL PROCEDURE CODE, S 476.

CONTEMPT OF COURT—*continued*

See INJUNCTION—DISOBEDIENCE OF ORDER FOR INJUNCTION.

[I. L. R., 23 All., 485

See RECEIVER . I. L. R., 28 Calc., 190

1. CONTEMPT GENERALLY.

1.—District Court—*Civil Procedure Code (Act XIV of 1882), s 493—Disobedience to injunction issued by District Court—Powers of District Court—Court of Record.*—A District Court is not a Court of Record, and as such has no inherent power to commit for contempt. The jurisdiction [illegible] is set in motion by a party who deems himself aggrieved. KOCHAPPA *v*. SACHI DEVI (1902)

[I. L. R., 26 Mad., 494

2. PENAL CODE, s. 174.

2.—Land acquisition—*Indian Penal Code (Act XLV of 1860), ss. 174, 177—Land Acquisition Act (I of 1894), ss. 9, 10—Code of Criminal Procedure (Act V of 1898), s. 205—Giving false information to a public servant, whether non-furnishing of correct statements as to names and interests of persons, amounts to—Contempt of Court, whether non-attendance in Court in obedience of summons to attend Court, amounts to—Notice to persons interested in lands of intention of Government to take lands for public purposes—Joint trial*—A Deputy Collector made a complaint against [illegible]

statements upon which he desired to proceed; and the Magistrate issued processes for the attendance of the accused to answer a charge under s 177, Indian Penal Code, and s 10 of the Land Acquisition Act. On the day fixed for trial the lessee appeared, and appearance was made on behalf of the lessor by his mukhtear, who asked the Magistrate, under s 205 of the Code of Criminal Procedure, to dispense with the personal attendance of that accused, which the Magistrate refused to accede to, and called upon him to show cause why he should not be prosecuted for contempt of Court under s 174, Indian Penal Code. *Held* that, in the absence of the written statements on which the proceedings were founded, and in the absence of any reference as to the particular statement or statements [illegible]

CONTEMPT OF COURT—*concluded*

2. PENAL CODE, s. 174—*concluded*.

though not a personal appearance on service of summons, and his having moved the superior Courts against the proceedings of the Magistrate, his action [illegible]

[illegible]

being still before the High Court in respect of the [illegible]

[illegible]

DURGA DAS RAKHIT *v.* UMESH CHANDRA SEN (1900) . . . . 5 C. W. N., 131

3.—Vakil—*Professional misconduct—Munsif, jurisdiction of—Disobedience of order.*—A Munsif called upon a vakil to show cause on the 22nd November why a report should not be made against him to the High Court for gross professional misconduct. On the same date the vakil put in a written explanation, and the matter was ordered to be put up on the 6th December for orders On the 6th December the vakil did not appear. Later, on the 20th December, a proceeding was drawn up for the prosecution of the vakil under s. 174, Indian Penal [illegible]

[illegible]

ingly set aside. *Held* also that when the vakil [illegible]

[illegible]

to take proceedings against the vakil in the way he did IN THE MATTER OF PROKASH CHUNDER SARKAR (1903) . . 7 C. W. N., 797

CONTINUING OFFENCE

See BENGAL MUNICIPAL ACT (III OF 1884), ss 270, 271, 353 . 6 C. W. N., 167

See NORTH-WESTERN PROVINCES AND OUDH MUNICIPAL ACT, 1900, s 147. [I. L. R., 24 All., 309

See PUBLIC SERVANT . 5 C. W. N., 332

CONTRACT.

CONTRACT—*continued.*

See CONTRACT ACT

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT. [I. L. R., 29 Calc., 674

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE CONTRACTS.

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY. [L. R., 26 I. A., 1

——alteration of—

See DOCUMENT—ALTERATION OF [I. L. R., 25 Bom., 616

——breach of—

See ACT—1859—XIII.

See BREACH OF CONTRACT.

See BROKER . I. L. R., 30 Calc., 202

See CONTRACT ACT (IX OF 1872), s. 51. [I. L. R., 30 Calc., 865

See DAMAGES—

SUITS FOR DAMAGES—BREACH OF CONTRACT ;

MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT

See LIMITATION ACT, 1877, SCH II, ART 116 . . I. L. R., 25 Mad., 587

See REGISTRAR OF HIGH COURT—SALE BY REGISTRAR . . 5 C. W. N., 593

See VENDOR AND PURCHASER—BREACH OF CONTRACT . . 7 C. W. N., 905

——breach of, by decree-holder—

See DECREE—CONSTRUCTION OF DECREE—CONSENT DECREE. [I. L. R., 28 Calc., 557

——evidence of—

See TRANSFER OF PROPERTY [L. R., 28 I. A., 46

——formation of—

See RAILWAY COMPANY. [I. L. R., 27 Bom., 126

——illegal—

See CONTRACT ACT, s 23.

——implied—

See CRIMINAL BREACH OF TRUST. [6 C. W. N., 203

——in derogation of decree—

See CIVIL PROCEDURE CODE, s 244—QUESTIONS IN EXECUTION OF DECREE [6 C. W. N., 793

CONTRACT—*continued.*

——liability of minor on—

See ESTOPPEL—ESTOPPEL BY CONDUCT. [I. L. R., 30 Calc., 539

——privity of—

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . I. L. R., 24 Mad., 130

——running with the land—

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT . . . 5 C. W. N., 343

——to defer payment, effect of—

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF [L. R., 30 I. A., 238

——validity of—

See FERRY . I. L. R., 26 Mad., 156

——wagering—

See CONTRACT ACT, ss. 20, 30 AND 65. [I. L. R., 25 Mad., 561

1. CONSTRUCTION OF CONTRACTS.

1.—Maintenance—*Gifts for maintenance—Construction—Primâ facie gifts for life* —Gifts or contracts expressed to be for maintenance, and indefinite as regards duration, may be shown by the acts of the parties or other circumstances to be intended to operate in perpetuity; but *primâ facie*

563; 6 C. W. N., 1

2. WAGERING CONTRACTS.

2.—"Badni" transaction—*Burden of proof—Act IX of 1872 (Indian Contract Act), s. 30.*

3.—Differences—*Gambling transactions—Contract Act (IX of 1872), s. 30—Contracts for sale and purchase of goods without intention to*

CONTRACT—*continued.*

2. WAGERING CONTRACTS—*concluded.*

to pay or receive money between one another according as the market price of the goods should vary from

Act, XXI of 1848, and the expression "by way of wager" used in s. 30 of the Indian Contract Act (IX of 1872). Transactions for the purchase and sale of goods comprised two classes of contracts—the one class, suitable to traders, such as the defendants were, and all duly fulfilled by delivery and payment, and the other class extravagantly large and left without any attempt at fulfilment. *Held* that the inference was that in the latter class the parties never intended

The Universal Stock Exchange v. *Strachan (1896), A. C., 166,* referred to KONG YU LONE & CO. v. LOWJEE NANJEE 1901)

[I. L. R., 29 Calc., 461; s.c., 5 C. W. N., 714; L. R., 28 I. A., 239

4.—Principal and agent—*Act IX of 1872 (Indian Contract Act), s. 30—Contract collateral to a wagering contract not unenforceable.*—Although, by reason of s. 30 of the Indian Contract Act, 1872, a wagering contract is void, a contract collateral to such a contract is not neces-

amounts to a request by the principal to the agent to pay the amount of the losses, if any, on those wagering transactions. *Parakh Govardhanbhai*

5. ———— *Act IX of 1872 (Indian Contract Act), s 30—Principal and agent—Suit by principal to recover from agent money received on account of a wagering contract.*

3 ALTERATION OF CONTRACTS.

(*a*) ALTERATION BY PARTY.

6.—*Mortgage—Suit for sale after redemption of a prior mortgage—Bond held by prior mortgagee*

CONTRACT—*continued.*

3. ALTERATION OF CONTRACTS—*continued.*

(*a*) ALTERATION BY PARTY—*continued.*

found to have been altered in a material particular —Effect of such alteration—A puisne mortgagee brought a suit for sale against his mortgagors on two mortgages, and impleaded therein as defendants the heirs of a prior mortgagee As to this prior mortgage, the plaintiff stated in his plaint:—"The plaintiff has now learnt that the defendant No. 1, Tajammul Husain Khan, had made a prior mortgage of a four *biswa* share in *mauza* Saiyid Nagar *alias* Nayagaon, *pargana* Bilari, to Bhagwan Das under a registered bond, dated the 7th August, 1886, for R1,000. Bhagwan Das is dead. The defendants

Nos 3 to 6, the plaintiff may be asked to pay that sum; and the entire hypothecated property may be sold by auction, and the whole amount of the prior incumbrance which the plaintiff might have to pay, and also the entire amount claimed, and costs and

produced, was found to have been tampered with and altered in a material particular, the extent of the share mortgaged having been increased *Held* by STANLEY, C.J, and BANERJI, J. (*dissentiente* AIKMAN, J), that such alteration did not render the instrument void *in toto* so as to justify a Court in ignoring its existence and passing a decree in favour of the plaintiff for sale of the property comprised in it without payment of the amount due under it, or any part of that amount An interest in immovable property having become vested by the

sayya (1885), I. L. R, 9 Mad, 399; Ramasamy Kon v. *Bharani Ayyar (1866), 3 Mad. H. C. Rep*, 247; *Suffell* v. *Bank of England (1882), 9 Q. B D.*, 555; *Subrahmania Ayyan* v. *Krishna Ayyan (1899), I. L R, 23 Mad., 137; Beanland* v *Hirst (1821), 23 R. R., 756; Hutchins* v *Scott (1837), 46 R. R, 770; Stewart* v. *Aston (1858), 8 Ir. C. L R, 35; Browne* v. *Lockhart (1840), 10 Sim., 420, Chichester* v. *Marquis of Donegall (1870), L. R., 5 Ch, 497*; and *Kennedy* v. *Green (1833), 6 Sim*, 6, referred to. *West* v. *Stewart (1843), 14 M. and W.*, 47, and *Agricultural Cattle Insurance Company* v. *Fitzgerald (1851), 16 Q. B*, 432, also referred to by BANERJI, J. *Held* by AIKMAN, J., that, the mortgage-deed of the 7th August, 1886, being the sole admissible evidence of the rights of the prior mortgagee in respect thereof, and that instrument containing a material and unexplained alteration, the prior mortgagee could neither sue upon it nor use it as a defence to the action brought by the puisne mortgagee *Croockewit* v. *Fletcher*

the cases mentioned above. MANGAL SEN *v.* SHANKAR SAHAI (F B 1903) . I. L. R., 25 All., 580

(*b*) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS).

7.—*Undue influence—Sale—Inadequacy of consid-*

4. BREACH OF CONTRACT.

8.—Delivery—*Damages, measure of—Delivery, specific period for—Seller's option—Notice of*

(1903)

[I. L. R., 30 Calc., 477; *s.c.*, 7 C. W. N., 431

9.—Re-sale or rejection—*Right of re-sale—Contract Act (IX of 1872), s 107—Inferiority of quality—Right to reject—Proprietary right, exercise of—Damages*—Unless there is anything in the contract to the contrary, a buyer cannot be compelled to take goods with an allowance for inferiority of quality If the right to reject the goods as being of an inferior quality is not exercised by the buyer when the goods are tendered, but a right of a proprietary character in respect of the goods is exercised by directing delivery to be made to third parties then the buyer accepts the goods, and, if they remain in the possession of the seller, then the latter

CONTRACT—*concluded.*

4. BREACH OF CONTRACT—*concluded.*

a lien upon them, and is entitled, under s 107 of the Contract Act, to re-sell the goods and recover as damages the difference between the contract price and the price at the re-sale. HARIDAS KHANDELWAL *v.* KALUMULL (1903) . 7 C. W. N., 562: s.c. I. L. R., 30 Calc., 649

CONTRACT ACT (IX OF 1872).

See CONTRACT.

——s. 11—

See ESTOPPEL—ESTOPPEL BY CONDUCT. I. L. R., 30 Calc., 539

——s. 16—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT (INEQUITABLE CONTRACTS) I. L. R., 25 Bom., 126

——s. 19—

See ESTOPPEL—ESTOPPEL BY CONDUCT. I. L. R., 30 Calc., 539

——ss. 20, 30 and 65—

—*Advance on risk (yogyam) of ship—Marine insurance—Contract by way of wager*—In a document, dated 3rd August, 1896, signed by defendants and addressed to plaintiff, it was recited that plaintiff had lent a sum of money to defendants on the risk or security ("*yogyam*") of a ship belonging to defendants "now under sail to the Nicobars" from Negapatam; and the defendants stipulated that "as soon as the said ship starts for and reaches the Nicobar Isles and thence sets sail and goes to Rangoon, Moul-

vanced *Held* that he was not entitled to recover. The risk which formed the basis of the agreement, according to its true construction, commenced from the 23rd July, 1896, as set out in the document, because it was on that day that the vessel sailed from port and commenced to incur the perils of the deep. The agreement was consequently not void under s 20 of the Contract Act, nor were the defendants bound, under s 65 of that Act, to restore to plaintiff the sum they had received under its terms Such an agreement could not be held to be in any sense a policy of marine insurance *Per* DAVIES, J.—The suit should be dismissed, under s 30 of the Contract Act, on the further ground that the agreement was one by way of wager VAPPAKANDU MARAKAYAR *v.* ANNAMALAI CHETTI (1901) . I. L. R., 25 Mad., 561

CONTRACT ACT (IX OF 1872)—*continued.*

——s. 23—

See HINDU LAW—HUSBAND AND WIFE. I. L. R., 28 Calc., 751

See INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R., 25 All., 431

ILLEGAL CONTRACTS.

(a) GENERALLY.

—*Abkari Act (Mad. Act I of 1886), s. 24 (c)—License to sell arrack, issued under the Act—Rule contained in license, imposing duty on license-holder to obtain Collector's permission to sub-let—Agreement to sub-let and sell arrack to sub-lessee*

should sell arrack in plaintiff's licensed shop, and that plaintiff should supply the liquor to be sold. Rule 21 of plaintiff's license imposed a duty on plaintiff to obtain the sanction of the Collector in case he should sub-let. Neither plaintiff nor defendants obtained such sanction On a suit being filed

(b) AGAINST PUBLIC POLICY.

—*Consideration opposed to public policy—Parents making profit for themselves out of the marriage of their daughter—Act IX of 1887, Sch. II, cl. (38)—Small Cause Court suit*—The parents of a girl caused her to enter into an utterly unsuitable marriage, the husband agreeing to pay a certain sum monthly for the maintenance of the parents On suit by the mother to recover certain instalments of the maintenance so promised, it was *held* (1) that the suit was one not cognizable by

referred to BALDEO SAHAI *v.* JUMNA KUNWAR (1901) . . . I. L. R., 23 All., 495

——s. 30—

See ante, ss. 20, 30 AND 65

See CONTRACT—WAGERING CONTRACTS.

CONTRACT ACT (IX OF 1872)—*continued.*

——s. 43—

See CIVIL PROCEDURE CODE, s 153
[I. L. R., 25 Bom., 378

——s. 44—

See MORTGAGE—SALE OF MORTGAGE PROPERTY—RIGHTS OF MORTGAGEES
[I. L. R., 30 Calc., 953

——s. 45—

See REPRESENTATIVE OF DECEASED PERSON . . I. L. R., 25 Mad., 385

——s. 51—

—*Contract—Suit for damages for breach of con-*

ready and willing to carry out their part of the

SHRIRAM RUPRAM *v.* MADANGOPAL GOWARDHAN (P.C. 1903) . . . I. L. R., 30 Calc., 865

——s. 63—

—*Evidence Act (I of 1872), s 92, proviso 4—Registered document—Subsequent oral agreement—Remission of portion of promise—Discharge in full on receipt of portion of amount due—Evidence of oral agreement.*—In a suit for two years' rent, due under a registered lease, defendant pleaded a subsequent oral agreement by plaintiff to remit a portion of the rent each year, and filed a receipt by which plaintiff accepted payment at the reduced rate in full discharge in respect of one of the years *Held* that though, under proviso 4 to s. 92 of

——s. 64—

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[I. L. R., 33 Calc., 539

——s. 65—

See ante, ss 20, 30 AND 65

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[I. L. R., 30 Calc., 539

See INSURANCE—LIFE INSURANCE.
[I. L. R., 26 Mad., 183

CONTRACT ACT (IX OF 1872)—*continued*

——s. 65—*concluded.*

—*Act XV of 1877 (Indian Limitation Act), Sch. II, Art 97—Agreement to sell—Suit for specific performance—Agreement declared unenforceable—Alternative claim for refund of consideration paid thereunder—Limitation.*—The defendants, against whom a decree for foreclosure was outstanding, agreed to sell certain immovable property to the plaintiff, and the plaintiff paid into

the defendants, claiming in the alternative either a decree for specific performance of the agreement to sell or a refund of the money paid by him as part of the consideration for the sale agreed upon. The Court of first instance gave the plaintiff a decree for

on failure of consideration was governed as to limitation by Art. 97 of the second Schedule to the

MINNATULLA (1903) . I. L. R., 25 All., 618

——s. 68—

See CONTRIBUTION, SUIT FOR—CO-SHARERS, LIABILITY OF . 6 C. W. N., 903

See HINDU LAW—MARRIAGE—CEREMONIES . . I. L. R., 23 Mad., 497

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
[6 C. W. N., 336

——ss. 69, 70—

See LAND-REVENUE
[I. L. R., 26 Bom., 504

——s. 70—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.
[I. L. R., 30 Calc., 794

——s. 72—

See MONEY HAD AND RECEIVED.
[I. L. R., 25 Mad., 548

——s. 74—

See—INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

CONTRACT ACT (IX OF 1872)—*continued.*

——s. 107—

See Contract—Breach of Contract. [7 C. W. N., 562

——s. 130—

See Res Judicata—Causes of Action—Continuing Guarantee [I. L. R., 27 Bom., 418

See Surety—Discharge of Surety. [I. L. R., 29 Calc., 68

——ss. 134, 137—

See Surety—Discharge of Surety. [I. L. R., 24 All., 504

——s. 145—

See Contribution, Suit for—Payment of Joint Debt by one Debtor [I. L. R., 26 Mad., 322

——ss. 151, 152, 161—

See Railways Act (IX of 1890), s 72 [I. L. R., 30 Calc., 257

——s. 176—

See Limitation Act, 1877, Sch II, Art 57 . . I. L. R., 24 All., 251

——s. 208—

See Principal and Agent—Revocation . . I. L. R., 30 Calc., 265

——s. 229—

See Declaratory Decree, Suit for—Suits concerning Documents. [L. R., 29 I. A., 203

——s. 230—

See Principal and Agent—Authority of Agents . I. L. R., 24 Mad., 130

——s. 238—

See Principal and Agent - Liability of Principal . 6 C. W. N., 429

——s. 239—

See Hindu Law—Joint Family—Nature of Joint Family [I. L. R., 25 Mad., 149

See Parties—Parties to Suits—Joint Family, . I. L. R., 25 All., 378

——s. 242—

See Partnership—What constitutes Partnership . 6 C. W. N., 429

——s. 251—

See Partnership—Dissolution of Partnership . I. L. R., 26 Bom., 42

——s. 253—

See Hindu Law—Joint Family—Nature of Joint Family. [I. L. R., 25 Mad., 149

CONTRACT ACT (IX OF 1872)—*concluded.*

——s. 260—

See Guarantee. [I. L. R., 28 Calc., 597

——s. 264—

See Partnership—
Suits respecting Partnerships; [I. L. R., 25 Bom., 606
Dissolution of Partnership. [I. L. R., 26 Bom., 42

CONTRACT (AMENDMENT) ACT (VI OF 1899).

——ss. 1, 4—

See Interest—Stipulations amounting or not to Penalties.

CONTRADICTORY STATEMENTS.

See False Evidence—Contradictory Statements.

CONTRIBUTION.

See Mortgage—Sale of Mortgaged Property—Purchasers. [I. L. R., 26 Bom., 379

See Sale for Arrears of Rent—Rights and Liabilities of Purchasers. [6 C. W. N., 794

CONTRIBUTION, SUIT FOR.

See Bond . . I. L. R., 25 All., 155

See Parties—Parties to Suits—Mortgages, Suits concerning. [5 C. W. N., 423

See Transfer of Property Act, s. 82 [6 C. W. N., 583
I. L. R., 24 Mad., 85, 96

1. CO-SHARERS, LIABILITY OF.

1.—*Contract Act (IX of 1872), s. 69—Dispossession by co-sharer.*—Where a co-sharer is kept out

CONTRIBUTION, SUIT FOR—*continued*

1. CO-SHARERS, LIABILITY OF—*concluded*.

of possession wrongfully by another co-sharer, a suit for contribution at the instance of the latter for rent paid by him during the period of dispossession does not lie against the former. SWARNAMOYEE DEBI *v* HARI DAS ROY (1902) . 6 C. W. N., 903

2 VOLUNTARY PAYMENT.

2.—*Limitation Act (XV of 1877), Sch. II, Art 132—Voluntary payment—Assessment—Payment by A of assessment due on B's land does not give A a charge on such land—Contribution* —The plaintiff filed this suit in 1901 to recover R30, which he had paid for the defendants in respect of yearly assessments due upon their land since the year 1891 Their land formed part of a larger holding which stood in one name in the revenue records, and the assessment on which the plaintiff paid He now sued the defendants for contribution in respect of the

Act did not apply The mere fact that the plaintiff

[I. L. R., 26 Bom., 437

3 PAYMENT OF JOINT DEBT BY ONE DEBTOR

3.—Costs—*Contribution—Suit against three defendants—Decree against all for payment of plaintiff's costs—Payment of entire costs by one*

Upon a warrant of attachment being issued against *A*, he paid the whole amount due in respect of the *Held*

SYED EBRAHIM SAHIB (1902)
[I. L. R., 26 Mad., 373

4.—Evidence—*Contribution as between judgment-debtors—Decree against two defendants jointly—Satisfaction by one alone—Primâ facie case made by production of judgment and certificate of satisfaction—Joint tort-feasors*—Where the amount of a decree has been recovered from one of two judgment-debtors against whom it was jointly passed,

CONTRIBUTION, SUIT FOR—*continued*.

3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued*.

and he sues the other judgment-debtor for contribution

But it will be open to the party from whom contri-

be entitled to contribution Whether the principle laid down in *Merryweather* v. *Nixon*, 8 *T. R.*, 186, should be followed in India—*Quære*. SIVA PANDA *v.* JUJUSTI PANDA (1901) I. L. R., 25 Mad., 599

5 ———— *Act I of 1872 (Indian Evidence Act), s. 92—Construction of document—Evidence of oral agreement not excluded.*

surety *Held* that evidence was admissible to show that the plaintiff executed the mortgage-bond as a surety only. The plaintiff failed to prove that he was other than a principal, whereupon it was *held* that he was not entitled to recover anything from the defendants by way of contribution, the case upon

6.—Revenue sale—*Hindu law—Payment, by one of several co-sharers owning estate subject to revenue, to save sale—Charge on share of co-sharers—Contribution—Transfer of Property Act (IV of 1882), ss. 82, 100—Revenue Recovery Act (Mad. Act II of 1864), ss 2, 32, 42—Civil Procedure Code (Act XIV of 1882), s. 601—Statutory application of general principle of equity to particular cases—Limitation Act (XV of 1877), Sch. II, Arts. 132,*

CONTRIBUTION, SUIT FOR—*continued.*

3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued.*

he is by operation of law entitled to a charge upon the share of each of his co-sharers for the realization of the latter's share of the revenue, as between the co-sharers *Seshagiri* v. *Pichu, I. L. R., 11 Mad.*, 452, followed. *Achut Ramchandra Pai* v. *Hari Kamti, I. L. R., 11 Bom., 313; Kinu Ram Das* v. *Mozaffer Hosain Shaha, I. L. R., 14 Calc., 809*, and *Seth Chitor Mal* v. *Shib Lal, I. L. R., 14 All., 273*, dissented from. *Per* BHASHYAM AYYANGAR, *J.* (at the first hearing).—That the suit was governed by Art 132 of Sch. II to the Limitation Act, in so far as it related to the enforce-

[illegible]

generally arises in cases where the party seeking

[illegible]

from the income of the plaintiff's share after it had

[illegible]

the person bringing the suit is referred to as having "paid" the amount sought to be recovered. In such a case, it is but just that all should contribute in proportion towards a benefit claimed by all. It is immaterial whether the party seeking contribution made the payment voluntarily or involuntarily,

[illegible]

whom he seeks contribution have been benefited to that extent. RAJAH OF VIZIANAGRAM v. SETRUCHERLA SOMASEKHARARAZ (F.B. 1903)

[I. L. R., 26 Mad., 686

7.—**Surety** — *Contract Act (IX of 1872), s 145—Implied promise by principal debtor to indemnify surety — Joint decree against two judgment-debtors - Satisfaction by one of them by execution of promissory note—Suit by him for contribution—Maintainability—"Sum paid under the guarantee"*—Two persons jointly executed a negotiable promissory note payable to *S* for R1,000, each receiving R500 out of the consideration. *S* subsequently sued them on the note, and obtained a decree against them jointly for R1,480, being the amount due under the

[illegible]

showed that the last mentioned promissory note was accepted by *S* as payment of the amount due under the decree. This note had not, at the date of the suit, been paid. Plaintiff now sued the other joint maker

CONTRIBUTION, SUIT FOR—*concluded.*

3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*concluded.*

of the original promissory note for contribution. *Held* that he had no cause of action at the date of suit. PUTTI NARAYANAMURTHI AYYAR v. MARIMUTHU PILLAI (1902) . I. L. R., 26 Mad., 322

4. JOINT WRONG-DOERS.

8.—**Bonâ fide claim**—*Bonâ fide claim of right.*—When a joint decree was passed against several persons, no suit for contribution would lie as between them if they were wrong-doers in the sense that they knew or ought to have known that they were doing an illegal or wrongful act. But if they were not guilty of wrong in that sense, but acted under a *bonâ fide* claim of right, and had reason to suppose that they had a right to do what they did, then there is a right of contribution *inter se*. Some time in 1826, *R*, the common ancestor of the parties, dispossessed *K* of a share in a certain property; after an interval of 27 years and 6 months *K* brought a suit and proved his right and recovered possession; meanwhile, *i.e.*, 5 years after the dispossession, *R* had died and had been succeeded by his sons. There was nothing to show that *R*, or, after him, his heirs, knew that they were doing a wrongful or unlawful act or that they did not act under cover of a *bonâ fide* claim of right. The circum-

[illegible]

referred to. HARI SARAN MAITRA v. JOTINDRA MOHAN LAHIRI (1900) . . 5 C. W. N., 393

9.—**Dispossession** — *Tort-feasor— Dispossession*—Where the plaintiffs were in possession of land standing in the names of their father and deceased brother, part of which was sold by the deceased brother's widow to the defendants, who got a decree for possession against the plaintiffs, who kept the former out of possession: *Held* that plaintiffs' possession should not be considered as that of tort feasors, and that they were therefore entitled to recover from the defendants, by way of contribution, the rent paid by the plaintiffs for the portion of the land purchased by the defendants. MOHESH CHANDRA MUNDLE v. BOYDYA NATH VAITANDI (1901) . . . . 6 C. W. N., 88

CONVERTS.

See HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION AUTHORITY

[I. L. R., 25 Bom., 551

CONVERTS—*continued*

—Hindus becoming Mahomedans—*Hindu law—Joint Hindu family—Effect of conversion of member of joint Hindu family to Mahomedanism—Regulation VII of 1832, s. 9—Compromise—Title taken under compromise between persons having mutually exclusive claims*—In the year 1845 one Ratan Singh, who at that time formed with his son Daulat Singh a joint Hindu family, possessed as such of considerable property, both moveable and immoveable, became converted to Mahomedanism In 1851 Ratan Singh died, his son Daulat Singh having predeceased him, and such portion of the property as was situate in British India was taken over by the Court of Wards, and held by them apparently on behalf of Raj Kunwar, the widow of Ratan Singh, and Sen Kunwar, the widow of Daulat Singh (these two ladies being at that time detained in Lucknow under the supervision of the officials of the King of Oudh), without any recognition of either widow having a title superior to that of the other In 1857 Sen Kunwar executed a bond for a considerable sum of money in favour of Jai Chand, the father-in-law of her daughter, Mewa Kunwar Sen Kunwar died in 1857, and Raj Kunwar in 1858 After the death of these ladies, three claimants to the property appeared, namely, Chatar Kunwar and Mewa Kunwar, [illegible]

partition of the property in accordance with the terms of the compromise was completed In 1866 Chatar Kunwar died, and upon her death Mewa Kunwar successfully asserted her right by survivorship to the 4¼ annas which had been the share of her sister, and thus became possessed of the whole 8½ annas assigned by the compromise mentioned above to the daughters of Daulat Singh *Meanwhile*, however, Jai Chand had brought a suit upon the bond given to him in 1857 by Sen Kunwar Why this bond was originally executed did not appear, nor that there was evidence of any such legal necessity pressing upon Sen Kunwar as would have supported an incumbrance of more than her own life interest in the property The final decree in this suit was obtained by Jai Chand in 1868, that is to say, after the surviving defendant, Mewa Kunwar, had been declared entitled to the entire 8½ annas share, and it was a decree based upon a confession of [illegible]

CONVERTS—*concluded.*

Singh in 1845, the provisions of s. 9 of Regulation VII of 1832 embodying merely a rule of procedure and not a rule of substantive law, and no suit claiming the family property having been brought by Daulat Singh to which the rule of procedure therein laid down could be applied; that in any case the conversion of Ratan Singh worked a separation of the joint Hindu family, and one-half of the property became vested in Daulat Singh, though it might not have been actually partitioned; that the property so becoming vested in Daulat Singh would be held by him as a separated Hindu; that the property was held by the Court of Wards during the lives of Raj Kunwar and Sen Kunwar, not specifically for either of them, but for the benefit of the rightful owner, both ladies being incapable of managing their affairs; that, after the compromise arrived at between Chatar Kunwar and Mewa Kunwar on the one side and Khairati Lal on the other, the estate which Chatar Kunwar and Mewa Kunwar took was a Hindu daughter's estate merely, and not an absolute estate, and that, inasmuch as no legal necessity was shown for the making of Sen Kunwar's bond or for the relinquishment by Mewa Kunwar [illegible] Chand in [illegible] the estate [illegible] than that [illegible] death her sons were entitled to recover possession. [illegible]

could not be held to be *res judicata* in the present appeal, the judgment in that case could be used as evidence to the extent pointed out in the cases of *Ram Ranjan Chukerbatty* v *Ram Narain Singh* [illegible]

CONVEYANCE

See STAMP ACT (II OF 1899)—
s 24 AND SCH I, ART. 23; [I. L. R., 27 Bom., 150
SCH I, ARTS. 55, 23 AND 62 (*e*) [I. L. R., 24 All., 372

CONVICTION.

—legality of—

See APPEAL IN CRIMINAL CASE—PRACTICE AND PROCEDURE. I. L. R., 30 Calc., 288

—no bar to civil action—

See DAMAGES—SUITS FOR DAMAGES—TORT . . 6 C. W. N., 915

CONVICTION—*concluded.*

——**on wrong charge**—

See Error . I. L. R., 29 Calc., 481

——**previous**—

See Evidence—Criminal Cases—Previous Convictions. [I. L. R., 28 Calc., 689

See Previous Conviction

——**setting aside, for error in law**—

See Joinder of Charges. [5 C. W. N., 866

——**setting aside, when accused does not appeal**—

See Revision—Criminal Cases. [5 C. W. N., 330

——**without framing charge**—

See Sessions Judge, Jurisdiction of. [I. L. R., 28 Calc., 63

——**without jurisdiction**—

See Magistrate—Re-trial of Cases. [I. L. R., 29 Calc., 412

[illegible] when all the [illegible] were found to [illegible] Singh v Jogi [illegible] C. W. N., 298

2.—*Indian Penal Code (Act XLV of 1860), ss 290, 447—Public nuisance—Criminal trespass—Conviction on a charge which the accused was not called upon to meet*—When the accused was called upon to answer a charge under s 447, Indian Penal Code, and was convicted under that section as also under s 290, Indian Penal Code, and on appeal the Sessions Judge was of opinion that the conviction could not be maintained under s 447, but that s. [illegible] conviction could not stand. In the matter of Chinibas Pal (1901) . . 5 C. W. N., 567

CO-PARCENERS.

See Hindu Law—Joint Family.

COPIES OF DOCUMENTS.

See Stamp Act (II of 1899), Sch I, Art. 24 . I. L. R., 26 Bom., 522

COPY OF DECREE.

See Limitation Act, 1877, ss. 12 and 5. [7 C. W. N., 109

CORONER.

—*Coroner's Act (IV of 1871), ss. 24, 25, 26, 29—Prisoners Act (III of 1900), ss. 2, 11—Criminal Procedure Code (Act V of 1898), ss. 213, 214, 477, 479, 213, sub-s. (2)—Coroner's inquisition—Commitment to High Court Sessions—Jurisdiction of Presidency Magistrate to try or inquire—Acquittal or discharge by Magistrate—Bail—Jurisdiction of the High Court.*—The Coroner has power to commit to the High Court; but a commitment by him does not oust the jurisdiction of the [illegible] Magistrate will be operative, subject to the discretion of the High Court when subsequently considering the Coroner's inquisition. Emperor v. Jogessur Parsi (1903) . . . 7 C. W. N., 889

CORPORATION.

——**principal officer of**—

See Plaint—Verification and Signature . . . 5 C. W. N., 91

——**suit by**—

See Plaint—Verification and Signature . I. L. R., 30 Calc., 103

CORPSE.

See Theft . I. L. R., 25 All., 129

CO-SHARERS

CO-SHARERS—*continued.*

See CONTRIBUTION, SUIT FOR—

PAYMENT OF JOINT DEBT BY ONE DEBTOR; **I. L. R., 26 Mad., 686**
CO-SHARERS, LIABILITY OF.
[6 C. W. N., 903

See HINDU LAW—

JOINT FAMILY;
PARTITION—EFFECT OF PARTITION
[I. L. R., 24 All., 483

See INJUNCTION—SPECIAL CASES—POSSESSION OF JOINT PROPERTY
[I. L. R., 29 Calc., 500

See LAND REGISTRATION ACT, 1876.
[I. L. R., 30 Calc., 773

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION
[I. L. R., 25 Bom., 362

See PRE-EMPTION

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
[I. L. R., 30 Calc., 425

See VALUATION OF SUIT—SUITS—PARTITION . **I. L. R., 24 All., 381**

See VENDOR AND PURCHASER—INVALID SALES—PURCHASER WITH KNOWLEDGE OF LIABILITY TO PARTITION.
[I. L. R., 26 Bom., 519

——**appeal in suit by co-sharer landlord for rent—**

See APPEAL—ACTS—BENGAL TENANCY ACT, s. 153 . **7 C. W. N., 908**

——**dispossession by co-sharer landlord; limitation—**

See BENGAL TENANCY ACT, SCH III. ART 3 . **5 C. W. N., 405**

——**limitation of application by one of several co-sharers—**

See BENGAL TENANCY ACT, SCH III, ART. 6 . . **5 C. W. N., 763**

——**suit by, for rent—**

See BENGAL TENANCY ACT, s. 188.
[6 C. W. N., 329

——**suit by some of several co-sharers—**

See BENGAL TENANCY ACT, s. 188

1. ENJOYMENT OF JOINT PROPERTY.

ERECTION OF BUILDINGS.

1.—*Building, right to removal of—Discretion of Court—Judgment, contents of*—Where several parties are joint owners of land, and one of them erects a wall upon the land without the consent of his co-sharers, the Court should not interfere to order the demolition of the wall when there is no evidence to show that injury has been done to the party complaining and that reasonable steps were taken

CO-SHARERS—*continued*

1 ENJOYMENT OF JOINT PROPERTY— *concluded.*

ERECTION OF BUILDINGS—*concluded*

in time to prevent the erection of the wall *Najju Khan* v. *Imtiazuddin (1895), I. L. R., 18 All., 115*, dissented from. *Nocury Lall Chuckerbutty* v. *Bindabun Chunder Chuckerbutty (1882)*, [illegible] utmost importance that the decree should state the precise nature of the relief granted. FAZILATUNNESSA *v.* IJAZ HASSAN (1903)
[I. L. R., 30 Calc., 901

2 SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY.

(a) POSSESSION.

2.—*Suit concerning joint property—Suit for khas possession—Exclusive possession of one co-sharer—Partition—Denial of title in written statement—Cause of action—Improvement by tenant—Meliorating waste*—Where one co-sharer [illegible] landlord, leases it out to a tenant, who improves it [illegible] (1900) . . . **I. L. R., 28 Calc., 223**

(b) KABULIYATS.

3.—*Bengal Tenancy Act (VIII of 1885), ss. 52, 178, 188—Suit by a co-sharer landlord for additional rent, whether maintainable if the other co-sharer is not made a party—Right of suit*—Where a co-sharer landlord brings a suit against a raiyat for arrears of rent and for additional rent on the basis of a kabuliyat, executed by the raiyat, in which the right of the plaintiff to certain rent was admitted, and his right to additional rent for lands found on measurement to be in excess of the area stated was also admitted, and the right of the plaintiff and the liability of the defendant were distinctly set out as the basis of the agreement between the parties without any reference to the right of any other co-

CO-SHARERS—concluded

2. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—concluded.

(b) KABULIYATS—concluded.

sharer landlord: *Held* that such a suit is maintainable, although plaintiffs' co-sharer is not made a party. *Also*, that s 188 of the Bengal Tenancy Act [illegible]

of contract, does not refer to such a matter. *Baidya Nath De Sarkar v. Jhin (1897)*, 2 C. W. N., 41,

COSTS.

See ATTORNEY AND CLIENT. [I. L. R., 29 Calc., 63

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT. [I. L. R., 26 Bom., 235

See DIVORCE ACT (IV OF 1869). [I. L. R., 30 Calc., 631

See DIVORCE ACT (IV OF 1869)—
s. 35; I. L. R., 28 Calc., 221
s. 36 . 6 C. W. N., 414

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—COSTS.

See LAND REGISTRATION ACT (BEN. ACT VII OF 1876), s 82. 7 C. W. N., 568

See POSSESSION—ORDER OF CRIMINAL COURT AS TO—COSTS

See PRACTICE—CIVIL CASES—
APPEAL; I. L. R., 25 Mad., 426
SECURITY FOR COSTS; [5 C. W. N., 119
STAY OF PROCEEDINGS [I. L. R., 30 Calc, 627

See PRIVY COUNCIL, PRACTICE OF—COSTS

See SECURITY FOR COSTS

——appeal against order for—

See COURT-FEES ACT (VII OF 1870). [I. L. R., 28 Calc., 567

COSTS—continued.

——of inquiry before granting probate or letters of administration—

See COURT-FEES ACT (VII OF 1870), s. 19H . . 6 C. W. N., 898

——of wife—

See DIVORCE ACT (IV OF 1869), s. 7. [I. L. R., 29 Calc., 619

1. APPEAL.

1.—*Second appeal—Discretion of Court to give costs—Principle*—A second appeal lies, as to costs, against an appellate decree *Daulat Ram v. Durga Prosad (1893), I. L. R., 15 All, 333*, relied upon. A Court has full discretion as to costs; but that discretion must be exercised on general principles, and not arbitrarily. Case where it was held that the order of the first Court, ordering that plaintiff, who was the unsuccessful party, was not to pay any costs to defendant, was bad. BHUGOBATI PAL v. MAHOMED ALI (1903) . . . . 7 C. W. N., 647

2. SPECIAL CASES

2.—Appeal—*Privy Council—Appeal to Privy Council—Appeal dismissed for want of prosecution—Order made by the High Court that the appellant should pay the respondent's costs of application for leave to appeal*—Where an appeal to the Privy Council was dismissed for want of prosecution, the High Court ordered the appellant to pay the respondent's costs of the application for leave to appeal. *Wilson v. Carter (1893), Ap. Ca, 638*, followed. SECRETARY OF STATE FOR INDIA v. JANARDAN GANPATRAO (1902) [I. L. R., 27 Bom., 124

3.—Attorney and client—*Practice—Attorney, change of—Employment of attorney by testator* [illegible]

Shamrao Pandurang v. Trustees of Bhagvandas (1868), 5 Bom H. C., 163, distinguished. GIRINDRA COOMAR DUTT v AMULYA CHARAN GHOSE (1902) [6 C. W. N., 306

4.—Divorce—*Suit for dissolution of marriage—Costs between party and party—Costs between attorney and client—Liability of co-respondent—Damages—Divorce Act (IV of 1869), s 45—Civil Procedure Code (Act XIV of 1882), s. 220—Practice.*—Where a husband obtained an order for [illegible]

OUTHWAITE AND DIAZ (1900) [I. L. R., 28 Calc., 84

COSTS—*concluded*

2. SPECIAL CASES—*concluded*

5.—Mortgage—*Prior and subsequent mortgagees—Costs recoverable from puisne mortgagees—Act IV of 1882 (Transfer of Property Act), s. 90.* A prior mortgagee in a suit upon his mortgage [illegible]

entitled to a decree under s. 90 of the Act against the puisne mortgagee for the amount of the costs. RAM LAL *v.* SRI CHAND (1901)
[I. L. R., 23 All., 439

3. COSTS IN THE CAUSE

[illegible]

4. ORDER AS TO COSTS.

7.—*Appeal from order as to costs—Dismissal* [illegible] *suit to* [illegible] *plain-* [illegible] *—Civil Procedure Code (Act XIV of 1882), s. 99—* [illegible]

COUNCILS ACT.

See INDIAN COUNCILS ACT.

COUNSEL.

See BARRISTER.

See PRACTICE—CIVIL CASES—COUNSEL.

——exclusive right of audience—

See PRACTICE—VAKIL AND COUNSEL.
[I. L. R., 30 Calc., 986

——non-appearance of—

See APPEAL—DEFAULT IN APPEARANCE.
[I. L. R., 26 Mad., 267

[illegible] *se by* [illegible] *Pre-* [illegible] *far* [illegible] unsel [illegible] itches the case on behalf of the party: *Held* that, even if the person instructing has no authority to bind the

COUNSEL—*concluded.*

party, the compromise is binding on the latter if he ratifies the acts and the compromise. *Per* BANERJEE, J.—The appointment of counsel or a vakil by a party to conduct a case does not necessarily authorise him to make a binding compromise [illegible]

enters into a compromise on behalf of his client, a presumption arises that he has done so with his client's assent. BHUT NATH SIRCAR *v.* RAM LALL SIRCAR (1900) . . . 6 C. W. N., 82

COUNTERFEITING COIN.

—*Act XLV of 1860 (Indian Penal Code), s. 232—Counterfeiting Queen's coin—Removing rings from coins used as ornaments, and restoring the same to circulation.*—It is not an offence under s. 232 of the Indian Penal Code to remove the ring from a coin which has been used to form part of a necklace or other ornament, and to work up the face of the coin where the ring has been [illegible]

COURT.

See FOREIGN COURT, JUDGMENT OF.

See MANAGEMENT OF ESTATE BY COURT.

——meaning of "Court"—

See BOMBAY CITY IMPROVEMENT ACT.
[I. L. R., 27 Bom., 424

COURT OF SESSION.

See JURY—WITHDRAWAL OF CASE FROM.
[5 C. W. N., 411

See SESSIONS JUDGE.

COURT OF WARDS.

See GUARDIAN—DISQUALIFIED PROPRIETORS . . I. L. R., 24 All., 136

See OUDH LAND-REVENUE ACT (XVII OF 1876) . . . 5 C. W. N., 881

——petition to Collector against officer of—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.
[I. L. R., 30 Calc., 415

——position of manager—

See PUBLIC SERVANT.
[I. L. R., 28 Calc., 344

1.—Disqualified proprietor—*Act XVII of 1876 (Oudh Land-revenue Act), Chap. VIII—Nature of disqualification imposed by proceedings taken under Chap. VIII—Domicile.*—Where a person, who had been made a "disqualified

COURT OF WARDS—*concluded.*

proprietor" in Oudh under the provisions of Chap. VIII of Act XVII of 1876, attempted to sell a small portion of his property situated in the North-Western Provinces, which property had not been entered in any list of the property of the disqualified proprietor taken under the management of the Court of Wards, and had apparently escaped the notice of the Court of Wards, it was *held* that the disqualification imposed as a consequence of proceedings legally taken under Chap VIII of the Oudh Land-revenue Act, 1876, was a personal disqualification, and extended to all dealings of the disqualified proprietor with any property, wheresoever situate; nor was this disability affected by the fact that this particular property had not been specifically taken over as part of the disqualified proprietor's estate by the Court of Wards

NARAIN *v.* FATEH BAHADUR SINGH (1902) [I. L. R., 25 All., 195

2.—**Servants of**—*Prosecution of servants of Court of Wards, by proprietor of estate, on assuming management.*—The owner of an estate, on assuming management thereof, is competent to prosecute a servant of the Court of Wards for criminal breach of trust committed during the management of the estate by the Court TARAK NATH NUNDY *v.* GOBINDA CHANDRA MITRA (1900) . . 5 C. W. N., 248

COURT OF WARDS ACT (BEN. ACT IX OF 1879).

—**ss. 6, 7 and 10**—*Court of Wards—Revenue—Proprietor—Jurisdiction—Civil Court—Lunatic—Charge of the person and property of*

consists of land or an interest in land, is not dependent upon the nature of the property, and is not restricted to property paying Government revenue S 6 does not profess to define the term "disqualified proprietors:" it defines the circumstances under which a certain class of persons, namely, the proprietors of land subject to Government revenue, shall be held to be disqualified from

COURT-FEES.

See COURT-FEES ACT.

COURT-FEES—*concluded*

See PRACTICE—CIVIL CASES—TEST CASE [I. L. R., 29 Calc., 140

See VALUATION OF SUIT

——**payment of**—

See PAUPER SUIT—SUITS [I. L. R., 25 Mad., 733

—*Fee payable on appeal under Indian Insolvent Debtors' Act (11 & 12 Vict, cap. 21).*—The Court-fee payable on an appeal preferred under s. 73 of the Indian Insolvent Debtors' Act is that which is provided for in Art. 18 of Schedule A to the table

COURT-FEES ACT (VII OF 1870).

See APPELLATE COURT — INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT. [I. L. R., 30 Calc., 501, 516

See VALUATION OF SUIT—SUITS. [I. L. R., 25 Mad., 543

—**Declaratory decree, suit for**—*Court-fees Act (VII of 1870), s. 7, cl. iv (c), and Art. 15 of Sch. II—Suit for declaratory decree and consequential relief—Suit for possession of wife—Appeal—Costs.*—S 7, cl. iv (c), and not Art. 15 of Sch. II, of the Court-fees Act (VII of 1870) applies to a case in which the plaintiff seeks for a

the order for costs, when no matter of principle is involved AMIRUL HOSSAIN *v.* KHAIRUNNESSA (1901) [I. L. R., 28 Calc., 567

——**s. 7**—

See PLAINT—REJECTION OF PLAINT. [I. L. R., 23 All., 423

——**s. 7, cl. iv (c)**—

See COURT-FEES ACT (VII OF 1870) [I. L. R., 28 Calc., 567

See DECLARATORY DECREE, SUIT FOR—, MISCELLANEOUS SUITS [I. L. R., 30 Calc., 788

—**s. 7, cl. iv (d)**—*Valuation by plaintiff of relief sought—Increase of valuation by Court, and return of plaint for want of jurisdiction—Invalidity of order*—A plaint was filed in a certain Court, praying for an injunction, the relief sought being valued at R5, on the basis of which valuation the Court had jurisdiction to try the suit. On objection being taken by the defendant that the plaintiff's valuation was incorrect, and that the proper valuation of the suit exceeded the pecuniary limits of the Court's jurisdiction, an issue was framed and the question was tried whether the suit was in fact

COURT-FEES ACT (VII OF 1870)—*continued.*

—**s. 7, cl. iv** (*d*)—*concluded.*

within the pecuniary jurisdiction of the Court, with the result that the Judge held the proper valuation of the relief sought to be R2,700, which exceeded the pecuniary jurisdiction of the Court. He accordingly returned the plaint for presentation to the proper Court. *Held* that the Court had no power to increase the value of the suit. S. 7, cl. iv (*d*),

had jurisdiction. GURUVAJAMMA *v.* VENKATAKRISHNAMA CHETTI (1900) **I. L. R., 24 Mad., 34**

—**s. 7, cl. v** (*b*)—

See VALUATION OF SUIT—SUITS **[I. L. R., 24 All., 218**

—**ss. 8, 11**—

See APPELLATE COURT — INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT. **[I. L. R., 30 Calc., 501**

—**s. 12**—

See APPEAL—ACTS—COURT-FEES ACT. **[I. L. R., 28 Calc., 334**

—**s. 16**—

—*Court-fees Act (VII of 1870), ss. 4, 16—Stamp duty on memorandum of objections—When*

hearing. REFERENCE UNDER COURT-FEES ACT, 1870, s. 5 (1901) **I. L. R., 25 Mad., 24**

—**s. 17**—

See PRACTICE — CIVIL CASES — TEST CASE **I. L. R., 29 Calc., 140**

—**s. 19D and Sch. I, Art. 11**—

1.—*Probate duty — Letters of administration, duty on — Letters of administration granted in respect of property passing by survivorship — Application for refund of duty*—A Hindu died intestate, leaving two sons who were joint with him. Part of the deceased's estate consisted of two

COURT-FEES ACT (VII OF 1870)—*continued.*

—**s. 19D and Sch. I, Art. 11**—*concluded.*

chargeable. *Held* that the refund could not be

held by the deceased as trustee. But where no duty

administration to exemption. COLLECTOR OF AHMEDABAD *v.* SAVCHAND LADUKCHAND (1902) **[I. L. R., 27 Bom., 140**

—**s. 19H**—

—*Valuation of assets by attorney-administrator—Application for inquiry under s. 19H, Court-fees Act — Materials necessary — Costs not provided in the Act—Assurance of the administrator to pay fee on the excess.* In moving the Court for an inquiry into the true value of the assets of a deceased person under s. 19H, Court-fees Act, it is not enough for the Collector simply to make an

—**s. 28**—

See PLAINT—REJECTION OF PLAINT. **[I. L. R., 23 All., 423**

1.—*Plaint insufficiently stamped—Dismissal of suit—Appeal by plaintiff to District Court—Stamp on memorandum of appeal also insufficient—Second appeal by plaintiff properly stamped—Maintainability of second appeal—Order by High Court for payment of proper duty on plaint and on*

of the Court-fees Act. An order was accordingly made by the High Court for a Court-fee of R150 to be paid on the plaint and on the memorandum of

COURT-FEES ACT (VII OF 1870)—*continued.*

—s. 28—*concluded.*

first appeal, within a specified time. VALAMBAL AMMAL *v.* VYTHILINGA MUDALIAR (1900)
[I. L. R., 24 Mad., 321

2—*Insufficient duty on plaint and on memorandum of appeal—Order by High Court on second appeal for payment of the duty properly payable—Civil Procedure Code (Act XIV of 1882), s. 582A—Retrospective validation of defective memorandum of appeal—Effect of this section on defective plaint.*—In a suit for the cancellation of a sale-deed executed by plaintiff to defendant for

—ss 28 and 30—

—*Further rules of 1883 — Rules 7 and 5 —* ... *attorneys and* ... *ect of same*— ... the value of ... stamp of R15 and an adhesive stamp of R2. The impressed stamp bore the name of the attorney for the plaintiff, and the adhesive stamp that of another, and it further appeared that the stamps had been purchased on

rules, and that the solicitor should have placed the circumstances on paper, to entitle him to the same GERSON *v.* RADHA KISSEN (1902) 6 C. W. N., 785

—s. 31—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE
[I. L. R., 26 Mad., 421

See COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE . I. L. R., 24 Mad., 305

COURT-FEES ACT (VII OF 1870)—*continued.*

—s. 34—

1.—*Court-fees Act (VII of 1870), as amended by Act XII of 1891, s. 34—Stamp Act (II of 1899), s. 69—Sale by thief of stolen stamps—Offence.*—A person who had been convicted

EMPRESS *v.* VIRASAMI (1900)
[I. L. R., 24 Mad., 319

2.—*Court-fees stamp, sale of—"Sale"—Exchange—Transfer of stamp on promise that one of equal value would be returned.*—Where a mukhtear, who had purchased a court-fee stamp for a client, transferred it to another client, the latter having agreed to return to the mukhtear another court-fee stamp of the same value, and was convicted of an offence under s 34 of the Court-fees Act: *Held* that there had been no 'sale' of the stamp within the meaning of s. 34 of the Court-fees Act (VII of 1870), and that the conviction should be set aside. KEDAR NATH SHAHA *v.* EMPEROR (1903)
[I. L. R., 30 Calc., 921 : s.c., 7 C. W. N., 704

—Sch. I, Art. 1, proviso—

See PRACTICE — CIVIL CASES — TEST CASE . . I. L. R., 29 Calc., 140

—Sch. I, Art. 11—

See ante, s. 19D AND SCH. I, ART. 11.

1.—*Assessment of value of estate principally*

2—*Will by husband conferring general power*

COURT-FEES ACT (VII OF 1870)—*concluded*

——Sch. I, Art. 11—*concluded*

ment, and also died Her executor now applied for probate of her will, and the question was raised whether he was liable to pay probate duty on the fund or any part thereof *Held* that the power of

[I. L. R., 25 Mad., 515

——Sch. II, Art. 15—

See COURT-FEES ACT (VII OF 1870) [I. L. R., 28 Calc., 567

——Sch. II, Art. 17, cl. iii—

See DECLARATORY DECREE, SUIT FOR—MISCELLANEOUS SUITS [I. L. R., 30 Calc., 788

—*Suit to set aside sale under the Revenue Sale Law (Act XI of 1859)—Court-fee payable on the plaint—Declaratory suit—Right to possession and to set aside sale—Consequential relief.*—A suit to set aside an alleged illegal sale held for arrears of revenue, and a declaration of right and possession in respect of the property in dispute, falls within Art 17, cl iii, as a suit to obtain a declaratory order where consequential relief is prayed for; and the plaint should be stamped as such. MAHOMED TAKIBUDDIN BUDDI *v* COLLECTOR OF THE 24-PARGANAS (1901) . . 6 C. W. N., 157

COVENANT.

——breach of—

See VENDOR AND PURCHASER—BREACH OF COVENANT.

COWRIE.

See GAMBLING . . 5 C. W. N., 503

CREDITOR.

See DEBTOR AND CREDITOR.

——suit by—

See RECEIVER . I. L. R., 30 Calc., 937

CRIMINAL BREACH OF CONTRACT.

See ACT—1859—XIII.

CRIMINAL BREACH OF TRUST.

See COURT OF WARDS . 5 C. W. N., 348
See JOINDER OF CHARGES [I. L. R., 24 All., 264

CRIMINAL BREACH OF TRUST—*concluded.*

1.—Claim for money—*Refusal to pay to a person money claimed by another—False claim—Suit brought by person claiming—Penal Code (Act XLV of 1860), s. 406.*—An accused person should not be convicted of criminal breach of trust on refusing to give to the complainant money, which is claimed by another person as well as by the complainant, and which the accused denies is due to the complainant. The fact that that other person has brought a suit to recover the amount claimed by him against the accused is a complete answer to

2.—Servant—*Penal Code (Act XLV of 1860), ss 405, 408, 109, 23, 24—Criminal breach of trust by a servant—Dishonest user of property—Deterioration in value, appreciable and substantial—*

property comes within the definition of the offence when such user causes substantial or appreciable loss to the owner of the property or gain to the accused.
1866, 3
KESHAB C
(1901)

3. ——— *Criminal breach of trust by servant—Papers ordered to be destroyed—Property—Appropriation of papers by servant—Penal Code (Act XLV of 1860), ss. 95 and 408—Criminal Procedure Code (Act V of 1898), s. 432.*—The accused, a servant, was ordered by his employers in Calcutta to take certain bags of papers and forms belonging to them to their yard in Garden Reach and there to burn and destroy them. Instead of doing this, the accused brought some of them to Bow Bazar in Calcutta. *Held* that the act of the accused did not amount to criminal breach

an offence under the Code but for the operation of that section. EMPEROR *v.* PREONATH CHOWDHRY (1902) . . . I. L. R., 29 Calc., 489

CRIMINAL COURT.

——disposal of property by—

See CRIMINAL PROCEDURE CODE, s 523.

CRIMINAL COURT—*concluded.*

——disposal of property by—*concluded*

See STOLEN PROPERTY—DISPOSAL OF, BY THE COURT.

——powers of—

See PRODUCTION OF PROPERTY. [7 C. W. N., 522

CRIMINAL FORCE.

——dispossession by—

See CRIMINAL PROCEDURE CODE, s. 522. [5 C. W. N., 250

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE

CRIMINAL INTIMIDATION.

—*Threat to ruin another by cases—"Injury"—Penal Code (Act XLV of 1860), ss 44, 503 and 506.*—In order to convict a person of criminal in-

that person is interested. Where the petitioner, who threatened to ruin the complainant by cases, was convicted of criminal intimidation under s. 506 of the Penal Code: *Held* that the conviction could not stand Had the threat been to ruin the complainant by false cases, the offence of criminal intimidation would have been committed; but as the threat was

"injury." JOWAHIR PATTAK *v* PARBHOO AHIR (1902) [I. L. R., 30 Calc., 418; s.c., 7 C. W. N., 116

CRIMINAL MISAPPROPRIATION.

—*Indian Penal Code, ss 403, 426—Criminal misappropriation of property—Mischief—Dishonest intention Deterioration of the value of mortgaged property.*—When the reversioner of a mortgagor sold some of the bricks of the mortgaged house which had tumbled down, and appropriated the amount, and the Magistrate convicted him of ... mischief: ... no sub- ... erty was ... MOHAN

... C. W. N., 34

CRIMINAL PROCEDURE CODE.

——application of—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS. [I. L. R., 25 Bom., 636

CRIMINAL PROCEDURE CODE—*continued.*

—**Application of, to Police in Calcutta.**—The Criminal Procedure Code does not apply to the Police in Calcutta unless expressly made applicable to them [s. 1, sub-s (2)]. Cls (*p*) and (*s*) of s 4, Code of Criminal Procedure, do not apply to the Police in Calcutta. SOLICITOR TO THE GOVERNMENT OF INDIA *v.* MADHO DHOBI (1903) . . . . . . 7 C. W. N., 661

——s. 4 (*h*)—"complaint"—

See post, s. 437 . 6 C. W. N., 437

See ADULTERY . I. L. R., 30 Calc., 910

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT . . 5 C. W. N., 370

See COMPLAINT—INSTITUTION OF COM-

See FALSE CHARGE . 5 C. W. N., 106

——s. 4, cl. (*o*)—"offence"—

See ACT—1859—XIII, ss 1, 2 [I. L. R., 24 Mad., 660

——s. 4, cls. (*p*), (*s*) do not apply to police in Calcutta—

See CRIMINAL PROCEDURE CODE. [7 C. W. N., 661

——s. 12—

See MAGISTRATE—POWERS OF MAGISTRATES . I. L. R., 29 Calc., 389

——s. 21—

See DISCHARGE OF ACCUSED. [7 C. W. N., 527

——s. 30—

See DEPUTY COMMISSIONER. [7 C. W. N., 457

——s. 42, cl. (*a*)—

See ESCAPE FROM CUSTODY. [6 C. W. N., 337

——s. 47—

See EASEMENT . I. L. R., 30 Calc., 918

——s. 54—

See ESCAPE FROM CUSTODY. [I. L. R., 28 Calc., 253

——s. 55—

See SECURITY FOR GOOD BEHAVIOUR. [7 C. W. N., 661

CRIMINAL PROCEDURE CODE—*continued*

—s. 79—

See Warrant of Arrest—Criminal Cases . . 5 C. W. N., 447

—ss. 87, 88—

See Absconding Offender

—s. 88—

See Mesne Profits—Assessment in Execution, and Suits for Mesne Profits . I. L. R., 28 Calc., 540

—ss. 94, 96—

See Production of Property [7 C. W. N., 522

—s. 103—

—*Penal Code (Act XLV of 1860), s. 187—Rendering assistance to a public servant—Refusal to sign search list by person who attended search under Abkari law—Liability—Party called* [illegible]

[illegible]

1903) . . . I. L. R., 26 Mad., 419

—s. 106—

See Recognizance to keep Peace.

—s. 107—

See Magistrate—Powers of Magistrates I. L. R., 29 Calc., 389

See Nuisance—Under Criminal Procedure Code . . 7 C. W. N., 142

See Possession, Order of Criminal Court as to—Likelihood of Breach of the Peace [6 C. W. N., 683
7 C. W. N., 29

CRIMINAL PROCEDURE CODE—*continued.*

—s. 107—*concluded.*

See Recognizance to keep Peace—

When Recognizance may be taken; 7 C. W. N., 32

Likelihood of Breach of Peace. [7 C. W. N., 746

See Security for Good Behaviour [I. L. R., 26 Mad., 471

See Transfer of Criminal Case—General Cases . I. L. R., 24 All., 151

—s. 109—

See Security for Good Behaviour. [5 C. W. N., 28
7 C. W. N., 661

—s. 110—

See Sentence—Imprisonment—Imprisonment generally. [I. L. R., 23 All., 422

—s. 112—

See Security for Good Behaviour [I. L. R., 26 Mad., 471

—s. 117—

See Evidence—Criminal Cases—Character . I. L. R., 25 All., 273

See Security for Good Behaviour [5 C. W. N., 249
I. L. R., 29 Calc., 392, 779

—s. 118—

See Recognizance to keep Peace—When Recognizance may be taken. [7 C. W. N., 32

See Reference to High Court—Criminal Cases—Security for Good Behaviour . I. L. R., 23 All., 80

See Security for Good Behaviour. [I. L. R., 25 All., 273
" 26 Mad., 471

—s. 119—

See Security for Good Behaviour. [I. L. R., 24 All., 148

—s. 122—

See Security for Good Behaviour. [6 C. W. N., 593
I. L. R., 25 All., 131

—s. 123—

See Security for Good Behaviour. [I. L. R., 25 All., 375

CRIMINAL PROCEDURE CODE— *continued.*

——s. 123—*concluded.*

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY. [I. L. R., 23 All., 422

——s. 125—

See SECURITY FOR GOOD BEHAVIOUR [I. L. R., 29 Calc., 455

——s. 133—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE. [5 C. W. N., 173, 566
7 C. W. N., 117
I. L. R., 23 All., 159

——ss. 133, 137—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESS . . 6 C.W. N., 548

——s. 138—

See VERDICT OF JURY. [6 C. W. N., 886

——s. 139—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE [5 C. W. N., 566
6 C. W. N., 886

——s. 144—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 26 Mad., 471

——Ch. XII (ss. 145 to 148)—

See POSSESSION—ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE. [I. L. R., 28 Calc., 416

See REVISION, CRIMINAL CASES—GENERAL RULES FOR EXERCISE OF POWER [I. L. R., 24 All., 315

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES. [I. L. R., 30 Calc., 508

——s. 145 (1882, s. 145; 1872, s. 530; 1861, s. 318)—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT, PROCEEDINGS IN. [I. L. R., 29 Calc., 187

See MAGISTRATE—POWERS OF MAGISTRATE. [I. L. R., 29 Calc., 242, 885

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . . 7 C. W. N., 142

See POSSESSION—NATURE OF POSSESSION. [I. L. R., 29 Calc., 208

CRIMINAL PROCEDURE CODE— *continued.*

——s. 145 (1882, s. 145; 1872, s. 530; 1861 s. 318)—*concluded.*

See POSSESSION, ORDER OF CRIMINAL COURT AS TO

See RECEIVER . I. L. R., 30 Calc., 593

See REVISION—CRIMINAL CASES—

GENERAL RULES FOR EXERCISE OF POWER; [I. L. R., 24 All., 443

MISCELLANEOUS CASES. [I. L. R., 25 All., 537

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 26 Mad., 471

See TRANSFER OF CRIMINAL CASE—

GROUND FOR TRANSFER; [I. L. R., 28 Calc., 709

LETTERS PATENT, HIGH COURTS, 1865, CL. 29 [I. L. R., 26 Mad., 188

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES. [I. L. R., 30 Calc., 508 n

——s. 146—

See BENGAL TENANCY ACT, s. 184 AND SCH. III . I. L. R., 28 Calc., 86

See LIMITATION ACT, 1877, ss 23 AND 28, AND SCH. II, ARTS. 120, 142 AND 144. [I. L. R., 26 Mad., 410

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION; [5 C. W. N., 105
6 C. W. N., 710

LIKELIHOOD OF BREACH OF THE PEACE; 7 C. W. N., 29

DECISION OF MAGISTRATE AS TO POSSESSION; 7 C. W. N., 118

ATTACHMENT OF PROPERTY. [I. L. R., 30 Calc., 110

—Attachment of property by Magistrate under s. 146 of the Criminal Procedure Code—Order relating to the management of such property—Interference by High Court—Jurisdiction—Criminal Procedure Code (Act V of 1898), ss. 145, 146 and 435—Charter Act (24 & 25 Vic. c. 104), cl 15.—W[illegible] order, unde[illegible] attaching ce[illegible] ings under [illegible] of this property granted a lease for a term of years at a certain annual rent, and subsequently, on the application of the lessee, the District Magistrate cancelled that lease and granted a fresh lease at a much lower rent: *Held* that no question of jurisdiction arose in the matter The High Court, in the exercise of its criminal jurisdiction, will no

CRIMINAL PROCEDURE CODE—*continued*

—s. 146—*concluded*

interfere with an order relating to the management of property under attachment by reason of an order under s 146 of the Code. A remedy can easily be obtained from a Civil Court LOKENATH SHAH CHOWDHRY v NEDU BISWAS (1902)
[I. L. R., 29 Calc., 382; s.c., 6 C. W. N., 469

—s. 147 (1882, s. 147)—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC
[5 C. W. N., 67, 335

—s. 148—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

TRANSFER OR WITHDRAWAL OF PROCEEDINGS;
[5 C. W. N., 686

COSTS
[I. L. R., 28 Calc., 302

—s. 154—

See INFORMATION OF COMMISSION OF OFFENCE
[6 C. W. N., 921
7 C. W. N., 345

—ss. 156, 159—

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL
[I. L. R., 30 Calc., 923

—s. 162—

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, ETC
[I. L. R., 28 Calc, 348

See WITNESS—CRIMINAL CASES—STATEMENTS OF WITNESSES
[I. L. R, 29 Calc., 483

—s. 164—

See CONFESSION—CONFESSIONS TO MAGISTRATE.

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER
[5 C. W. N., 864

See WITNESS—CRIMINAL CASES—STATEMENTS OF WITNESSES
[I. L. R., 29 Calc., 483

—s. 167—

See DETENTION OF ACCUSED BY POLICE
[7 C. W. N., 457

—s. 173—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES
[I. L. R., 29 Calc., 410

CRIMINAL PROCEDURE CODE—*continued*

—s. 188—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[I. L. R., 24 All, 256

—s. 190—

See ABSCONDING OFFENDER
[I. L. R., 29 Calc., 417

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES
[5 C. W. N., 488
6 C. W. N., 202, 926

See MAGISTRATE
[I. L. R., 30 Calc, 449

—s. 191—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES
[6 C. W. N., 202

See DEFAMATION—IMPUTATION ON A WIFE . I L. R., 25 Bom., 151

See SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 29 Calc., 392

—s. 192—

See MAGISTRATE—GENERAL JURISDICTION. . I. L. R., 30 Calc., 449

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS
[5 C. W. N., 686

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 24 All., 151

—s. 193—

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 630

—s. 195—

See post, s. 476 . 7 C. W. N., 423

See APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE
[I. L. R., 25 All., 534

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.
[I. L. R., 30 Calc., 415

See DEFAMATION—IMPUTATION ON A WIFE . I. L. R., 25 Bom., 151

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 615, 630

See FALSE CHARGE . 5 C. W. N., 106

See PENAL CODE, s 206.
[I. L. R., 28 Calc., 217

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I. L. R., 23 All., 249
" 25 All., 126
" 26 Bom., 785
" 26 Mad., 139

See SANCTION FOR PROSECUTION.

CRIMINAL PROCEDURE CODE—*continued.*

—s. 196—

See DEFAMATION—IMPUTATION ON A WIFE . . I. L. R., 25 Bom., 151

See JOINDER OF CHARGES.
[I. L. R., 25 Bom., 90

—s. 197—

See ADMINISTRATOR GENERAL.
[I. L. R., 30 Calc., 927

See SANCTION FOR PROSECUTION.

—s. 198—

See APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE
[I. L. R., 25 All., 534

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES . I. L. R., 25 All., 132, 209
„ 26 Mad., 43

See DEFAMATION—IMPUTATION ON A WIFE . . I. L. R., 25 Bom., 151

—s. 199—

See ADULTERY.
[I. L. R., 29 Calc., 415
„ 30 Calc., 910

See DEFAMATION—IMPUTATION ON A WIFE. . I. L. R., 25 Bom., 151

—s. 200—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES
[I. L. R., 29 Calc., 410

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS . 6 C. W. N., 840

—s. 202—

See COMPLAINT—

INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES;
[I. L. R., 29 Calc, 410

DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL . 6 C. W. N., 295

See CRIMINAL PROCEEDINGS—IRREGULARITY . I. L. R., 25 Mad., 546

—s. 203—

See COMPLAINT—

INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.
[6 C. W. N., 843

DISMISSAL OF COMPLAINT.

CRIMINAL PROCEDURE CODE—*continued.*

—s. 205—

See CONTEMPT OF COURT—PENAL CODE, s 174 . . . 5 C. W. N., 131

—s. 208—

See ACCUSED PERSON . 5 C. W. N., 110

—s. 209—

See DISCHARGE OF ACCUSED.
[I. L. R., 27 Bom., 84
„ 24 Mad., 136

See MALICIOUS PROSECUTION.
[I. L. R., 24 Mad., 59

—ss. 209, 210—

See REVISION, CRIMINAL CASES—DISCHARGE OF ACCUSED.
[7 C. W. N., 77

—s. 213—

See ACCUSED PERSON . 5 C. W. N., 110

—ss. 213, 214—

See CORONER . 7 C. W. N., 889

—s. 215—

See ACCUSED PERSON 5 C. W. N., 110

See COMMITMENT

—s. 222—

See DEFAMATION.
[I. L. R., 30 Calc., 402

—s 227—

See ADULTERY.
[I. L. R., 29 Calc., 415

—ss. 227, 228, 229—

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . 6 C. W. N., 72

—s. 230—

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION.
[I. L. R, 30 Calc., 905

—s. 232—

See ERROR . I. L. R., 29 Calc., 481

See SESSIONS JUDGE, JURISDICTION OF
[7 C. W. N., 301
I. L. R., 28 Calc., 63

—s. 233—

See CRIMINAL PROCEEDINGS.
[I. L. R, 28 Calc, 104

—ss. 233 to 239—

See JOINDER OF CHARGES

—s. 238—

See ADULTERY . I. L. R., 29 Calc., 415

CRIMINAL PROCEDURE CODE— *continued.*

—s. 239—

See ante, ss. 233 to 239

See Criminal Proceedings [I. L. R., 28 Calc., 104

—s. 242—

See Error . I. L. R., 29 Calc., 481

—s. 244—

See Witness—Criminal Cases—Summoning Witnesses [I. L. R., 30 Calc., 121

—s. 250—

See Compensation—Criminal Cases—

For Loss or Injury caused by Offence, [I. L. R., 28 Calc., 164

To Accused, on Dismissal of Complaint

See False Charge [I. L. R., 29 Calc., 479

—s. 253—

See Complaint—Dismissal of Complaint—Effect of Dismissal [I. L. R., 28 Calc., 211

See Discharge of Accused

See Magistrate—Withdrawal of Cases [I. L. R., 30 Calc., 693

—s. 254—

See Error . I. L. R., 29 Calc., 481

—Framing charge on complainant's evidence—Dismissal of charge without further evidence—Proper course—Same order on two charges—If [illegible]

[illegible]

—s. 256—

See Witness—Criminal Cases—Examination of Witnesses—Cross-Examination . . 6 C. W. N., 424

—s. 257—

See Witness—Criminal Cases—

Summoning Witnesses; [I. L. R., 26 Bom., 418

Examination of Witnesses—Cross Examination [I. L. R., 28 Calc., 594

—s. 259—

See Complaint — Dismissal of Complaint—Effect of Dismissal. [I. L. R., 28 Calc., 102

CRIMINAL PROCEDURE CODE— *continued*

—s. 260—

See Criminal Proceedings [5 C. W. N., 252

See Summary Trial. [I. L. R., 29 Calc., 409

—s. 263—

See Summary Trial . 6 C. W. N., 40

—s. 268—

See Assessors . . 6 C. W. N., 715

—s. 269—

See Jury—Jury in Sessions Cases. [I. L. R., 26 Mad., 598

—ss. 276 to 279—

See Jury — Jury in Sessions Cases—Choosing Jury . 7 C. W. N., 188

—ss. 284, 285—

See Assessors . I. L. R., 25 Bom., 694

—s. 285—

See Assessors . I. L. R., 24 Mad., 523 [6 C. W. N., 715

—s. 288—

See Confession—Confessions to Magistrates . . . 7 C. W. N., 345

See Evidence—Criminal Cases—Depositions . I. L. R., 24 Mad., 414

—s. 297—

See Charge to Jury—Summing up in General Cases. [I. L. R., 27 Bom., 644

—ss. 297, 298—

See Charge to Jury—Misdirection [I. L. R., 29 Calc., 379, 782

—ss. 300, 301, 303—

See Revision — Criminal Cases — Verdict of Jury, and Misdirection. [I. L. R., 30 Calc., 485

—s. 303—

See Verdict of Jury—General Cases. [7 C. W. N., 135

—s. 307—

See Habeas Corpus, Writ of [I. L. R., 29 Calc., 286

See Reference to High Court—Criminal Cases . 7 C. W. N., 135, 345

See Verdict of Jury—Power to interfere with Verdicts. [I. L. R., 29 Calc., 128

—s. 309—

See Assessors

CRIMINAL PROCEDURE CODE—*continued.*

——s. 326—

See JURY—JURY IN SESSIONS CASES—CHOOSING JURY . 7 C. W. N., 188

——s. 332—

See JURY—JURY IN SESSIONS CASES. [6 C W. N., 887

——s 337—

See CHARGE TO JURY—MISDIRECTION. [I. L. R., 29 Calc., 782

See PARDON . I. L. R., 25 Bom., 675 [I. L. R., 24 Mad., 321

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES [I. L. R., 25 Bom., 422

——s. 339—

See PARDON . I. L. R., 25 Bom., 675 [I. L. R., 24 Mad., 321

——s. 340—

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 25 All., 375

——s. 342—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS [I. L. R., 28 Calc., 669

See EXAMINATION OF ACCUSED PERSON. [7 C. W. N., 345

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER [5 C. W. N., 864

——s. 345—

See DEFAMATION—IMPUTATION ON A WIFE . . I. L. R., 25 Bom., 151

——s. 350—

See SESSIONS JUDGE, JURISDICTION OF. [I. L. R., 26 Bom., 50

——s. 367—

See DISCHARGE OF ACCUSED—EFFECT OF DISCHARGE I. L. R., 29 Calc., 726

See JUDGMENT—CRIMINAL CASES [7 C. W. N., 30 I. L. R., 25 Mad., 534

——s. 369—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL. [I. L. R., 28 Calc., 102

See DISCHARGE OF ACCUSED—EFFECT OF DISCHARGE . I. L. R., 29 Calc., 726

——ss. 386 to 389—

See COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE. [I. L. R., 28 Calc., 164

CRIMINAL PROCEDURE CODE—*continued*

——s. 388—

See COMPENSATION—CRIMINAL CASES—TO ACCUSED, ON DISMISSAL OF COMPLAINT [I. L. R., 26 Mad., 127

——s. 391—

See WHIPPING . I. L. R., 26 Mad., 465

——s. 403—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL. [I. L. R., 28 Calc., 211

See DISCHARGE OF ACCUSED—EFFECT OF DISCHARGE . I. L. R., 29 Calc., 726

See MAGISTRATE—RE-TRIAL OF CASES [I. L. R., 29 Calc., 412

1.—*S. 403 (1) and Expln. and s. 215—Want of* [illegible]

[6 C. W. N., 640

2.—*S. 403 (4)—Previous acquittal—Acquittal by assessors on charge of abetment of dacoity with murder—Subsequent conviction by jury of receiving stolen property—Court competent to try the* [illegible] persons were [illegible] with assess- [illegible] with murder, [illegible] sixth, with abetting them. The abettor was acquitted He was, however, subsequently charged before the Sessions Judge, sitting with a jury, with receiving stolen property knowing that it had been obtained by dacoity, under s 412 of the Indian Penal Code The jury returned a verdict of guilty, and the accused was convicted and sentenced The facts on which the accused was convicted of receiving stolen property were the same as those upon which he had been acquitted of abetment of dacoity with murder, the dacoity by which the stolen property was alleged to have been received being the same as that which had formed the subject of the previous charge On its being contended that the Court had power to try the accused a second time under sub-s (4) of s 403 of the Criminal Procedure Code, inasmuch as a [illegible]

that the conviction was bad KING-EMPEROR v KRISHNA AYYAR (1901) . I. L. R., 24 Mad., 641

—*Criminal Procedure Code (Act V of 1898), ss 209, 436, 532—Discharge of accused of an offence triable exclusively by Court of Session—Murder—Commitment made by District Magistrate—"Order him to be committed for trial," meaning of—Magistrate, competency of, to himself commit—Magistrate, power of—Evidence of witness partly against and partly in favour of accused—Evidence of witness as to what he heard from deceased—Hearsay evidence—Evidence Act (I of 1872), ss 6, 8, 11, 14* —Under s. 436 of the Code of Criminal

CRIMINAL PROCEDURE CODE—*continued*

——s. 436—*concluded.*

in the ordinary way, *viz*, by evidence of a primary character, and not by hearsay testimony. QUEEN-EMPRESS *v.* SURENDRA NATH SARKAR (1901)
[5 C. W. N., 574 : s.c., I. L. R., 28 Calc., 397

——ss. 436, 437—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[I. L. R., 28 Calc., 211

——s. 437—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[I. L. R., 28 Calc., 102
„ 29 Calc., 457

See DISCHARGE OF ACCUSED—EFFECT OF DISCHARGE . I. L. R., 29 Calc., 726

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I. L. R., 26 Mad., 41

See SECURITY FOR GOOD BEHAVIOUR
[I. L. R., 24 All., 148

1.—**Further inquiry**—*Magistrate, power of, to direct further inquiry into offences, some of which formed component parts of an offence of which accused was acquitted—Indian Penal Code (Act XLV of 1860), ss 147, 323, 342—Rioting, acquittal of Fresh trial for causing hurt*—Where an accused person was tried on a charge of being a member of an unlawful assembly with the common object of assaulting the complainant, but was acquit-

[illegible]

offence under s 342, Indian Penal Code, the District Magistrate was not competent to order further inquiry in regard to that offence. JALIRAM ALOM GANBURAH *v* RAJKUMAR UMAR SINGH (1900)
[5 C. W. N., 72

2. —— [illegible] *Code (Act V of* [illegible] *of persons* [illegible] *for good beha*[illegible] *legal—Complaint—"Discharge," meaning of—Magistrate, jurisdiction of—Procedure*—S 437 of the Code of Criminal Procedure is the only law

[illegible]

CRIMINAL PROCEDURE CODE—*continued*

——s. 437—*concluded.*

The terms "accused person" and "discharge" in s. 437 refer to a person accused of an offence who has been discharged of a charge of that offence within the terms of Ch. XIX of the Code. IMAN MANDAL *v* EMPRESS (1900) . . . 6 C. W. N., 163

3. ———— *Criminal Procedure Code (Act V of 1898), ss. 202, 203, 422 and 437—Dismissal of complaint—Further inquiry, order for—Refusal* [illegible]

[illegible] materials totall[illegible] before the High[illegible] HARIANI (1902 [illegible]

——s. 438—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO . 5 C. W. N., 71

See REFERENCE TO HIGH COURT—CRIMINAL CASES . I. L. R., 24 All., 346
„ 25 All., 128

——s. 439—

See REFERENCE TO HIGH COURT—CRIMINAL CASES . I. L. R., 24 All, 346

See REFORMATORY SCHOOLS ACT (VIII OF 1897), ss. 8, 9, 16 . 5 C. W. N., 210

See REVISION—CRIMINAL CASES.

——s. 451—

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECT.
[I. L. R., 25 All., 511

——s. 456—

See HABEAS CORPUS, WRIT OF.
[I. L. R., 29 Calc, 286

——s. 476—

See FALSE CHARGE . 5 C. W. N., 106

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 630

See REVISION CRIMINAL CASES—MISCELLANEOUS CASES
[I. L. R., 23 All., 249
„ 26 Bom., 785
„ 26 Mad., 98

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION.
[I. L. R., 25 All., 234

See SESSIONS JUDGE, JURISDICTION OF.
[7 C. W. N., 708

CRIMINAL PROCEDURE CODE— *continued.*

—s. 476—*continued.*

[illegible] *proceeding—Records of case* [illegible]

[I. L. R., 25 Mad.,

2. ———— *Code of Criminal Procedure (Act V of 1898), ss. 195, 476— ... of sanction—Indian Penal Code (Act* [illegible]

District Judge for revocation of the sanction, [illegible] made an order revoking the sanction, and sent the case, under s 476, to the District Magistrate for inquiry or trial. *Held* that, in granting the [illegible]

under s 476, Code of [illegible] consequently bad JADU NATH MAHTA *v* JAGADISH CHANDRA DEB (1902) . . 7 C. W. N., 423

3. ———— *Preliminary inquiry—Sanction for prosecution—Insufficiently stamped document presented for registration Document impounded and sent to Collector—Denial of execution—Inquiry by Deputy Collector Collector, whether a Revenue Court—Penal Code (Act XLV of 1860), s 471—Stamp Act (II of 1899), ss 38, 40, 42*—The petitioner presented a *kabuliyat*, purporting to have been executed in his favour by one *B*, for registration The Sub-Registrar thought the document was insufficiently stamped, impounded it, and sent it to the Collector for orders The Collector called on *B* to pay the deficient stamp duty and penalty *B* submitted a petition denying execution, and the Collector ordered the Deputy Collector to inquire into the fact of the execution The Deputy Collector reported that the petitioner had failed to prove the execution of the *kabuliyat* by *B*, and that it was not genuine Upon that report, and after hearing the [illegible]

under s. 476, Code of [illegible] that the order for prosecution was made without jurisdiction, as neither the Collector nor the Deputy Collector acted as a Court, and the inquiry by the latter was not a judicial inquiry, having been held solely for the purpose of determining who should be called on to pay stamp duty. KEDAR NATH GHOSH *v.* EMPEROR (1903) . . . 7 C. W. N., 795

—s. 477—

See CHARGE—FORM OF CHARGE [I. L. R., 28 Calc., 434

See FALSE EVIDENCE—GENERAL CASES [5 C. W. N., 615, 630, 630

—s. 487—

See MAGISTRATE—POWERS OF MAGISTRATES . I. L. R., 24 Mad., 262

See SESSIONS JUDGE, JURISDICTION OF. [7 C. W. N., 708

—s. 488—

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R., 25 All., 545

—ss. 488, 489, 490—

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R., 25 All., 165

—s. 491—

See HABEAS CORPUS, WRIT OF [I. L. R., 29 Calc, 288

—s. 494—

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES [I. L. R., 25 Bom., 422

—s. 495—

See GAMBLING—BOM. ACT IV OF 1887 [I. L. R., 26 Bom., 533

—s. 503—

See COMMISSION—CRIMINAL CASES.

—s. 511—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS. [I. L. R., 28 Calc., 689

—s. 514—

See RECOGNIZANCE TO APPEAR [I. L. R., 30 Calc., 107

—s. 517—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE [I. L. R., 30 Calc., 690

See STOLEN PROPERTY—DISPOSAL OF, BY THE COURT . I. L. R., 25 Bom., 702

CRIMINAL PROCEDURE CODE— *continued*

——s. 522—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE. [I. L. R., 29 Calc., 724

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE

—*"Criminal force," meaning of—Order for restoration of immovable property*—The term "criminal force," as used in s 522 of the Code of Criminal Procedure, must be understood as defined in s 350 of the Penal Code; and, to justify an order for the restoration of possession of immovable property under s 522, Criminal Procedure Code, the dispossession must have been by the actual use of criminal force, and not merely by the show of such force *Ram Chandra Boral* v *Jityandria (1897), 2 C W N, 305*, and *Ishan Chandra Kolla* v *Dina Nath Bhadak (1899), 4 C. W N, 307*, followed SRIHARI SHOME *v.* LAL KHAN (1900) [5 C. W. N., 250

——s. 523—

See CRIMINAL PROCEEDINGS [I. L. R., 26 Bom., 552

—*Criminal Procedure Code (Act V of 1898), ss. 517, 523—Disposal of property taken by police as stolen property—Adjudication of theft case, whether absolutely necessary before order for* [illegible]

[illegible] C. W. N., 410

——s. 526—

See ACCUSED PERSON . 5 C. W. N., 110

See CRIMINAL PROCEEDINGS. [5 C. W. N., 252

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 29 Calc., 392

See TRANSFER OF CRIMINAL CASE

——s. 528—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES [5 C. W. N., 488

See MAGISTRATE—

POWERS OF MAGISTRATE; [I. L. R., 26 Mad., 130

WITHDRAWAL OF CASES [I. L. R., 30 Calc., 693

CRIMINAL PROCEDURE CODE— *continued.*

——s. 528—*concluded.*

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS. [5 C. W. N., 686

See TRANSFER OF CRIMINAL CASE—GENERAL CASES [7 C. W. N., 114
I. L. R., 24 Mad., 317
„ 26 Mad., 394

——s. 529 (*f*)—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS [5 C. W. N., 686

——s. 530—

See CRIMINAL PROCEEDINGS. [5 C. W. N., 252
I. L. R., 24 Mad., 675

———— cl. (*j*)—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS [5 C. W. N., 686

——s. 531—

See CRIMINAL PROCEEDINGS [I. L. R., 26 Mad, 640

——s. 533—

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS . 6 C. W. N., 840

——s. 536—

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS. [I. L. R., 26 Mad., 243

——s. 537—

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM. [I. L. R., 26 Mad., 1

See ASSESSORS [I. L. R., 25 Bom., 694
„ 24 Mad., 523

See CRIMINAL PROCEEDINGS. [I. L. R., 28 Calc, 104

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS . 6 C. W. N., 840

See JOINDER OF CHARGES. [5 C. W. N., 294, 866
I. L. R., 29 Calc., 385
„ 26 Mad., 125

See JURY—JURY IN SESSIONS CASES—CHOOSING JURY . 7 C. W. N., 188
[I. L. R., 26 Mad., 598

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—EVIDENCE, MODE OF TAKING, ETC. . 5 C. W. N., 544

CRIMINAL PROCEDURE CODE—*concluded.*

——s. 540—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES ; [6 C. W. N., 98

EXAMINATION OF WITNESSES—EXAMINATION BY COURT [I. L. R., 29 Calc, 387

——s. 545—

See COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE . I. L. R., 24 Mad., 305

——s. 556—

See MAGISTRATE—GENERAL JURISDICTION [I. L. R, 24 Mad., 238

See SESSIONS JUDGE, JURISDICTION OF. [7 C. W. N., 708

——s 562—

See FIRST OFFENDERS [I. L. R., 24 All., 308

CRIMINAL PROCEEDINGS.

——expenses of—

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—WHAT CONSTITUTES LEGAL NECESSITY . 6 C. W. N., 648

1.—Complaint disclosing graver offence—*Summary trial—Complaint disclosing facts constituting offence of a* [illegible]

[illegible]

2.—Duty of Magistrate—*Criminal Procedure—Procedure in Magistrate's Court—Information filed against an accused, but no summons issued—Case must be disposed of by Magistrate, although no summons applied for by complainant—Search-warrant—Property seized by police under warrant—Claim by third party—Inquiry by Magistrate as to claim of third party—Criminal Procedure Code (V of 1898), s 523*—Where an information is

CRIMINAL PROCEEDINGS—*continued.*

filed against a person, the Magistrate is bound to dispose of the case, and, if no evidence is offered against the person accused, he must be discharged The complainant, by omitting to take out a summons against such person, cannot keep a charge hanging over him for an indefinite time The summons is [illegible]

[illegible]

Where property is seized under a search-warrant, the Magistrate must proceed to make inquiry so as to [illegible]

[illegible] take care that the proceedings in their Courts are conducted with such reasonable expedition as will prevent the parties from being improperly harassed by undue delay *In re Ratanlal Rangildas (1892), I. L R, 17 Bom, 748*, doubted. IN THE MATTER OF LAKSHMAN GOVIND NIRGUDE (1902)

[I. L. R., 26 Bom., 552

3.—Irregularity—*Criminal Procedure Code (Act V of 1898), s. 202—Failure to "record reasons" for postponing issue of process and inquiring into case*—By s 202 of the Criminal Procedure Code, if a [illegible]

[illegible]

4.—Misjoinder—*Joint trial—Misjoinder of parties—Discharge of accused on ground of misjoinder by Sessions Judge—Direction that accused be re-tried—Jurisdiction—Code of Criminal Procedure (Act V of 1898), ss. 233, 239, 423 and 537—Penal Code (Act XLV of 1860), ss 411, 414 and 109*—*M* and *K* were convicted at the same trial of receiving stolen property, namely, currency notes, as well as of assisting in concealing or disposing of such notes, which they knew or had reason to believe were stolen property. Each of them was charged with the same offences only in respect of a currency note of R500, but in respect of the charges on two other notes of R100 each the charges against each of them related only to one of these notes *Held* that there had been a misjoinder of parties, the transactions being altogether separate and distinct agai [illegible] Sessions Jud [illegible] on the grou [illegible] to add to t [illegible] should be re- [illegible] leave to the [illegible] which should be taken in such a matter, and it was not intended by the order of discharge in the case of *Queen-Empress v. Chandi Singh (1887), I. L R., 1*[illegible]

L

CRIMINAL PROCEEDINGS—*continued.*

Calc., 395, to free the accused in that case from the consequences of his acts or to declare that no order for re-trial could be passed in such a case. *Queen-Empress* v. *Fakirapa (1890), I. L. R., 15 Bom., 491,* and *Empress of India* v. *Murari (1881), I. L. R., 4 All., 147,* referred to. KUMUDINI KANTA GUHA *v.* QUEEN-EMPRESS (1900) . I. L. R., 28 Calc., 104

5.—**Necessity for charge, finding and sentence**—*Insolvent Act (11 & 12 Vict., c. 21), ss 47 and 50—Offence under s. 50 a criminal offence—Charge, etc., must be framed to sustain conviction and sentence—Opposing creditors—Grounds of opposition should be stated in clear terms — Practice — Procedure.*— Insolvents were

ment was wrongly made S. 47 of the Insolvent Act provides the machinery by which the grounds of opposition to a debtor's discharge may be inquired into and precisely defined before the hearing. IN RE VALLABHDAS JAIRAM (1903)
[I. L. R., 27 Bom., 394

6.—**Powers of Magistrate**—*Criminal Procedure Code (Act V of 1898), s. 530—Trial of an accused by Magistrate not empowered by law—Charge of giving false evidence under s. 193, Indian Penal Code—Trial by First-class Magistrate though facts disclosed offence under s. 194 as*

Code, and making no order in respect of the other accused, as he considered the imprisonment already undergone was sufficient. *Held* that the order was wrong, as the proceedings of the First-class Magis-

CRIMINAL PROCEEDINGS—*concluded.*

trate were not void within the meaning of s. 530 of the Code of Criminal Procedure. *Queen-Empress* v. *Gundya, I. L. R., 13 Bom., 502,* referred to. KING-EMPEROR *v.* AYYAN (1901)
[I. L. R., 24 Mad., 675

7.—**Proceedings in wrong place**—*Criminal Procedure Code (Act V of 1898), s. 531.*—S. 531 of the Code of Criminal Procedure applies to a case where a Magistrate who has authority to commit a case for trial does so, but has not territorial jurisdiction in the place where the offence to be tried is alleged to have been committed. RAYAN KUTTI *v.* EMPEROR (1903) . . I. L. R., 26 Mad., 640

CRIMINAL TRESPASS.

1.—**House trespass**—*Act XLV of 1860 (Indian Penal Code), s. 457—House trespass by night with intent—Alleged intent, theft—Proved*

in order to have sexual intercourse with a woman who he knew was the wife of the complainant, and further that he did so without the husband's consent, and the accused was convicted: it was *held* that the conviction was proper It was not necessary under the circumstances that the complainant should bring a specific charge of adultery *Brijbasi* v. *The Queen-Empress (1896), I. L. R., 19 All., 74,* referred to. QUEEN-EMPRESS *v.* KANGLA (1900)
[I. L. R., 23 All., 82

2.———— *Penal Code (Act XLV of 1860), ss. 441, 448—House trespass—*

[I. L. R., 26 Bom., 558

CROPS.

——attachment of—

See Penal Code, s. 206.
I. L. R., 28 Calc., 217

——removal of—

See Penal Code, s. 424
I. L. R., 26 Mad., 481

——standing—

See North-Western Provinces Rent Act (XII of 1881), s 43
I. L. R., 25 All., 282

See Possession, Order of Criminal Court as to—Attachment of Property . . I. L. R., 30 Calc., 110

CROSS-DECREE.

See Set-off—Cross-decrees.

CROSS-EXAMINATION.

See Witness—Civil Cases—Examination of Witnesses—Cross-examination.

See Witness—Criminal Cases—Examination of Witnesses — Cross-Examination

——of accused, by Magistrate, during police investigation—

See Transfer of Criminal Case—Ground for Transfer
5 C. W. N., 864

——of witness on commission—

See Practice – Civil Cases – Commission . . I. L. R., 30 Calc., 625

CROSS-OBJECTION.

See Appeal—Objections by Respondent . . I. L. R., 30 Calc., 655

CROWN.

See Prerogative of the Crown.

——prerogative right of, to discontinue prosecution—

See Rioting . . 7 C. W. N., 301

CROWN GRANTS ACT (XV OF 1895).

See Crown Lands.
I. L. R., 26 Mad., 268

CROWN LANDS.

—*Alienation of Crown lands — 23 & 23 Vict., cap. 41, etc.—Power of Governor in Council to alienate through authorised agent under dharkast*

CROWN LANDS—*concluded*

rules—Alienation so made binding and irrevocable—Jurisdiction of Civil Court to determine validity of grant under dharkast rules—Assignment of waste, duly made in accordance with dharkast rules, not liable to revision by anyone —The Civil Courts have jurisdiction to determine whether a grant of land, alleged to have been made by an officer on behalf of the Crown, is binding on [illegible]

[illegible] purports to have been made under the *dharkast* rules by an officer empowered by them to make it is a [illegible]

[illegible] that behalf; and his acts, if within the scope of his authority, are as binding on the Crown as if they had been done by the Governor in Council Where such a grant has been made, the action of the officer to whom an appeal lies with reference to it is final and binding on the Government, if his act was within the scope of his authority. His action is not subject to any other control And when the proposal of an applicant is accepted by an officer duly authorised in that behalf by the *dharkast* rules, and the acceptance is communicated to the applicant, there is a valid contract and disposal of the land (unless the grant was procured by fraud, misrepresentation or mutual mistake as to any matter of fact essential to the agreement) Such a grant cannot, therefore, be annulled or revoked by the officer who made the [illegible]

[illegible] appeal being preferred to him Observations by Bhashyam Ayyangar, *J*, *on alienations by the* [illegible]

CRUELTY TO ANIMALS.

See Prevention of Cruelty to Animals Act (XI of 1890)

CULPABLE HOMICIDE.

See Murder.

CUSTODY.

See Escape from Custody.

——of lunatic—

See Lunatic . I. L. R., 30 Calc., 978

CUSTOM.

See HINDU LAW—
CUSTOM;
INHERITANCE—MIGRATING FAMILIES
[I. L. R., 29 Calc., 433

See MAHOMEDAN LAW—CUSTOM.

See MALABAR LAW—CUSTOM

See NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881), CH. II AND S. 93
[I. L. R., 23 All., 270

See PRESCRIPTION — EASEMENTS — PRIVACY . . . 5 C. W. N., 147

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . . 6 C. W. N., 181, 861

See RIGHT TO USE OF WATER
[I. L. R., 29 Calc., 100

See SUCCESSION . L. R., 30 I. A., 190

— of trade—

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT.
[I. L. R., 29 Calc., 323

— exclusion of—

See LEASE—CONSTRUCTION
[I. L. R., 30 Calc., 883

CUTCHI MEMONS.

See HINDU LAW—MARRIAGE—EVIDENCE AS TO, AND PROOF OF, MARRIAGE.
[I. L. R., 27 Bom., 485

D

DACOITY.

See EVIDENCE—CRIMINAL CASES—DYING DECLARATIONS.
[I. L. R., 25 Bom., 45

See WHIPPING.
[I. L. R., 25 Bom., 712

1.—Attempt — *Act XLV of 1860 (Indian Penal Code), ss 397, 511 — Attempt to commit dacoity—Use of arms in endeavouring to effect escape — Conviction under what sections to be recorded* —Where several persons were found endeavouring to break into a house, and some of them, being armed, used violence, but only in attempting to escape being arrested, it was *held* that they could not properly be convicted under s 397, read with s. 511, of the Indian Penal Code *Queen* v. *Koonee (1867), 7 W. R, Cr. R, 48,* referred to QUEEN-EMPRESS *v.* BENI (1900) . I. L. R., 23 All., 78

2. ———— *Act XLV of 1860 (Indian Penal Code), s 402 — Assembling for the purpose of committing dacoity—Evidence.*—Several persons were found at 11 o'clock at night on a road just outside the city of Agra, all carrying arms (guns and swords) concealed under their clothes. [illegible]

[illegible] stances *Held* that these persons were rightly convicted under s. 402 of the Indian Penal Code of assembling together with intent to commit dacoity. *The Deputy Legal Remembrancer* v. *Karuna Baistobi (1894), I. L R, 22 Calc., 164; Balmakand Ram* v. *Ghansam Ram (1894), I. L. R, 22 Calc, 391;* and *Queen-Empress* v. *Papa Sani (1899), I. L R., 23 Mad, 159,* referred to. QUEEN-EMPRESS *v.* BHOLU (1900) . I. L. R., 23 All., 124

3.—Dacoity with murder — *Penal Code (Act XLV of 1860), ss. 395, 396 — Dacoity attended with murder — Ingredients necessary to constitute the offence—Causing of death or hurt, etc, not for the purpose of committing theft* —The first essence of an offence under s 396 of the Penal Code is that the dacoity is the joint act of the persons concerned, and the second essence of the offence is that the murder is committed in the course of the commission of the dacoity in question The essence of the offence of robbery involved in the offences under ss 395 and 396 is that the offender, for the end of committing theft or carrying away or attempting to carry away properties obtained by theft, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint When several persons are found to have attacked and assaulted some other person or persons, not for the purpose of carrying out the object of looting property, but quite independently of it, the main element [illegible]

4.—Possession of stolen property—*Penal Code (Act XLV of 1860), ss. 395, 411—Charges of dacoity and receiving stolen property—Charge to jury—Possession of stolen property—Misdirection* [illegible]

[illegible] directed them that the fact of a stolen shirt having been found in possession of the accused two months after the dacoity, was sufficient to justify them in convicting the accused of the dacoity *Held,* on appeal that [illegible]

[illegible] put to them in the positive way which the Judge adopted GUZZALA HANUMAN *v* EMPEROR (1902) . . I L. R., 26 Mad., 467

DAMAGE.

See SPECIAL DAMAGE.

DAMAGES.

———

See Admiralty or Vice-Admiralty Jurisdiction I. L. R., 29 Calc., 402

See Contract—Breach of Contract.

See Contract Act (IX of 1872), s 51 [I. L. R., 30 Calc., 865

See Costs—Special Cases—Divorce [I. L. R., 28 Calc., 84

See Defamation [I. L. R., 28 Calc., 794

See Interest—Damages.

See Limitation Act, 1877, Sch II, Art 120 . . 5 C. W. N., 356

See Malicious Prosecution.

See Mesne Profits—Assessment in Execution, and Suits for Mesne Profits . I. L. R., 28 Calc., 540

See Misjoinder [I. L. R., 26 Bom., 259

See Negligence [I. L. R., 24 Mad., 36

See Principal and Agent—Authority of Agents I. L. R , 30 Calc., 207

See Railway Company [I. L. R., 27 Bom , 344

See Slander . I. L R , 28 Calc , 552

See Small Cause Court — Mofussil—Jurisdiction—Damages

See Vendor and Purchaser—

Invalid Sales—Purchaser with knowledge of Liability to Partition , [I. L. R., 26 Bom , 519

Breach of Contract [7 C. W. N., 905

——measure of, when raiyat dispossessed—

See Mesne Profits—Mode of Assessment and Calculation [6 C. W. N., 732

——non-liability of banian for—

See Lien . I L. R., 30 Calc , 937

——special—

See Right of Suit—Obstruction of Public Highway 5 C. W. N , 285

DAMAGES—*continued*

1. SUITS FOR DAMAGES.

(a) Breach of Contract.

1.—**Agreement to purchase**—*Notice—Agreement to purchase—Failure to do so*—In an agreement made by the defendant with the

the contract and intimating that on his failing to do so they would sell the property. Tukun Singh *v.* Honuman Das (1902) . 7 C. W. N., 108

2.—**Executory contract**—*Municipality—Bombay District Municipal Act Amendment Act (Bom Act II of 1884), s 30—Breach of executory contract—Binding character.*—In a suit for damages

3.—**Proof**—*Proof of inferiority of quality—Examination of samples from portions of bulk—Method of ascertaining damages—Method established and recognized in the trade*—In a suit for damages by a purchaser of goods on the ground of their being below the guaranteed standard of quality, if it is clear from the evidence that such is not

if the method of ascertaining damages appears to be established and recognized in the trade, the plaintiff need not show how he has dealt with the goods delivered to him, and whether he has suffered any and what loss by reason of the goods not being up to the warranted standard. Boisogomoff *v.* Nahapiet Jute Company (1902) [I. L R., 29 Calc , 323 ; s.c., 6 C.W.N , 495

(b) Tort

4.—**Assault**—*Cause of action—Assault on provocation—Right of suit*—An assault, which the defendant had committed on the plaintiff upon some provocation, was found to have been of a very gross character and not altogether justified. *Held* that an action for damages lay against the defendant, and that the fact that the defendant had been fined by a Criminal Court was no bar to it. Akhil Chandra Biswas *v.* Akhil Chandra Dey (1902) [6 C. W. N., 915

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES.

Breach of Contract.

5.—*Assessment of damages—Contract—Breach of contract to deliver goods—Market price at due date—Suit in High Court cognizable by Small Cause Court—Decree in such suit for less than R1,000—Costs—Small Cause Courts Act (XV of 1882), s. 20, as amended by s 11 of Act I of* [illegible]

C.J.—Obviously, value created for special purposes is irrelevant, and it is for this reason that the prices made by Bulls and Bears are of no use. If the market value is uncertain, then we must have recourse to such surrounding circumstances as affect the probabilities, and, among them, to real prices proved about the time of due date The plaintiffs sued the defendants for damages for non-delivery of cotton, the question between them being the market rate on the 25th May, 1900, the date on which delivery should have been made The 24th May was a holiday, and it was proved beyond dispute that on the 23rd the rate was R225 per *khandi* The plaintiffs alleged that on the 25th the price was R240 per *khandi*: the defendant alleged that it was R217 per *khandi*, and counter-claimed accordingly. The plaintiffs adduced evidence of five cases of alleged actual dealings at R220 per *khandi* on the 25th May. The lower Court, however, was [illegible]

the market was on the rise, the conclusion might be drawn that the real rate on the 25th May was not less than R225 How much more it was, the [illegible]

which damages should be assessed The Court of Appeal accordingly varied the decree of the Court below, and passed judgment for the plaintiffs The question then arose whether, having regard to s 20 of the Small Cause Courts Act (XV of 1882), as

DAMAGES—*concluded.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*concluded.*

Breach of Contract—*concluded.*

amended by s. 11 of Act I of 1895, the plaintiffs were entitled to the costs, the decree in their favour being for less than R1,000. *Held* that no costs could be given. The mere fact that the plaintiffs claimed a sum in excess of the Small Cause Court jurisdiction was not enough to take the case out of the operation of s. 20 The result of the suit [illegible]

claim, and no more, but none of the general costs of suit or the costs incurred in connection with the plaintiff's claim. No costs of the appeal. Shridhan Gopinath *v.* Gordhandas Gokuldas (1901) . . . **I. L. R., 26 Bom., 235**

6.—*Mode of assessing damages* [illegible]

not purchase any coal against defendant's contract. The plaintiff now sued for damages for breach of the contract The only question was as to the mode of assessing damages. There was practically no coal in Bombay of the description contracted for at the dates at which delivery should have been given, and consequently no market rate could be proved. At [illegible]

case, and in the absence of any evidence as to a market rate, the figures given in this statement might properly be received in evidence for the purpose of fixing the actual value of the coal at the dates of breach, thus affording a measure of the damages suffered Jugmohandas Vurjiwandas *v.* Nusserwanji Jehangir Khambatta (1902) **[I. L. R., 26 Bom., 744**

DAMDUPAT, RULE OF.

See Hindu Law—Usury. **[I. L. R., 26 Mad., 662.**

DAUGHTER.

See Hindu Law—Inheritance—

Special Heirs—Females—Daughters;

Divesting of, Exclusion from, and Forfeiture of, Inheritance—Unchastity. **[I. L. R., 26 Mad., 509.**

DEBTOR AND CREDITOR—*concluded.*

—*Fraudulent assignment—Suit by creditor to set aside—Suit by creditor on his own behalf and also on behalf of all creditors—Civil Procedure Code (XIV of 1882), s 30—Misjoinder—Practice—Notice of assignment—Mahomedan law—Mushaa—Assignment of undivided share.*—On the 25th July, 1898, the plaintiff obtained a decree against the second defendant, and in execution attached (as belonging to the said defendant No. 2) a one-third share of the interest accruing upon certain moneys in the hands of the Accountant General of Bombay. The said one-third share was thereupon claimed by the first defendant (wife of defendant No 2), who alleged that it had been assigned to her by her husband (defendant No 2) by a deed of assignment executed by him on the 15th October,

attachment as such. The suit was brought by the plaintiff in his own right and also on behalf of all the other creditors of defendant No 2 It was objected on behalf of the defendants that this was a misjoinder

rule did not apply, inasmuch as the assignment was of a definite share of the money in the hands of the Accountant General. On the merits the plaintiff's claim was dismissed EBRAHIMBHAI RAHIMBHAI *v* FULBAI (1902) . I. L. R., 26 Bom., 577

DECEASED PERSON.

——statements of—

See EVIDENCE ACT, s 32
[I L. R., 25 All., 143, 236

DECLARATION.

See DYING DECLARATION

DECLARATORY DECREE, SUIT FOR.

DECLARATORY DECREE, SUIT FOR—*continued*

See ACT—1863—XX, s. 14
[I. L. R., 24 Mad., 243

See COURT-FEES ACT (VII OF 1870).
[I. L. R., 28 Calc., 567

——enforcing attachment—

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUIT.
[I. L. R., 28 Calc., 492

1 SUITS CONCERNING DOCUMENTS

1.—*Oudh Rent Act (XXII of 1886)—Jurisdiction of Civil Court—Specific Relief Act, 1877, ss 39, 42—Limitation Act, Sch II, Arts 91, 120—Contract Act, 1872, s. 229—Transfer of Property Act, 1882, s. 3*—In a suit on June 4, 1894, for possession of a village, or, alternatively, for a declaration that the defendant had no right therein and was liable to be ejected by an ordinary notice of ejectment, it was admitted that under the Oudh Rent Act of 1886 the Civil Court had no jurisdiction to grant either relief *Held* that, as it appeared that the substantial object of the suit was to cancel an instrument of lease relied on by the defendant, with a view to an order of ejectment in the Revenue Court, it was competent, under either s 39 or s 42 of the Specific Relief Act, 1877 Two Courts having found as a fact that the plaintiff only came to know of the said lease on June 24, 1891, it was not excess

whether under Art. 91 or Art 120 of Sch II to the Limitation Act. RAMPAL SINGH *v* BALBHADDAR SINGH (1902) . . L. R., 29 I. A., 203; [s.c. I. L. R., 25 All., 1; 6 C. W. N., 849

2.—*Practice—Procedure—Pending suit—Another suit based on the defence in the first suit—Specific Relief Act (I of 1877), s. 39—Cancellation of instrument*—On the 16th March, 1899, the firm of Chhaganlal Haribhai brought suit No. 96 of 1899 against Dhondu and Baba to recover a sum due on a bond passed by them to the firm. The defence pleaded that the bond was void, being passed for the balance due on wagering transactions. While this suit was pending, on the 13th June, 1899, Dhondu (one of the defendants in the suit) brought suit No. ... bond can- ... 39 of the ... Subordinate ... ie dismissed ... aim in the ... relief pro-

DECLARATORY DECREE, SUIT FOR—*continued.*

1. SUITS CONCERNING DOCUMENTS—*concluded.*

previous suit. CHHAGANLAL HARIBHAI *v.* DHONDU CHUDAMAN RANGRI (1903)
[I. L. R., 27 Bom., 607

2 ADOPTION.

3.—*Guardians and Wards Act (VIII of 1890), s 48*—S 48 of the Guardians and Wards Act does not prevent a widow, who has been appointed by the District Judge under that Act to be guardian of a minor as her husband's adopted son, from maintaining a suit for a declaration that the minor was not the adopted son of her husband. RAKHAL MONI DASSI *v* ADWYTA PROSAD ROY (1903)
[I. L. R., 30 Calc., 613 ; s c., 7 C. W. N., 419

3 ENDOWMENT.

4.—*Civil Procedure Code (Act XIV of 1882), s 539—Suit for declaration that the defendants were not dharmakartas of certain temples, and for the appointment of trustees—No claim for temple property—Specific Relief Act (I of 1877), s. 42—Maintainability*—A suit for the appointment of new trustees to a temple, on the ground that the defendants are not the lawful trustees and that the trusteeships are therefore vacant, is a suit under s 539 (*a*) of the Code of Civil Procedure, being comprised in the words "whenever the direction of the [illegible]

Act, by reason of the fact that no consequential relief is claimed, even if there be temple properties in the possession of the defendants as *dharmakartas* Where a suit is maintainable under s 539 of the Code of Civil Procedure, and the plaint seeks the relief specified in that section, s 42 of the Specific Relief Act does not apply *Srinivasa Ayyangar v Srinivasa Swami, I L R, 16 Mad, 31*, distinguished New trustees appointed under cl (*a*) of s 539 of the Code of Civil Procedure will be entitled to demand possession of the temple properties from the defendants in the suit whose title to administer the trust has been negatived by the decree, and, if such possession be not given, will be entitled to bring a suit to eject them from the temple and its endowments NETI RAMA JOGIAH *v* VENKATA CHARULU (1902) . I. L. R., 26 Mad., 450

4 REMOVING ATTACHMENT

5.—*Execution of decree—Rights of attaching creditor—Suit by one attaching creditor for declaration that property cannot be attached by another creditor on the ground that the second creditor's decree was bad in law—Cause of action*—The plaintiffs, as judgment-creditors who had attached under a decree for money certain immovable property of their judgment-debtors, sued another judgment-creditor who attached the same property, asking for

DECLARATORY DECREE, SUIT FOR—*continued.*

4. REMOVING ATTACHMENT—*concluded.*

a declaration that the property attached was not saleable in execution of the second judgment-creditor's decree. [illegible]

(*1897*), *I. L. R, 25 Calc, 1*, and *Malkarjun v. Narhari (1900), I. L. R, 25 Bom, 337*, referred to LACHMI DAYAL *v* HAR DANNI LAL (1903)
[I. L. R, 25 All., 347

5 MISCELLANEOUS SUITS.

6.—**Consequential relief**—*Court-fees Act (VII of 1870), Sch II, Art. 17, cl (iii), and s 7, cl. iv (c)*—A suit in which the only prayer is to have it declared that a certain decree is ineffectual and inoperative against the plaintiffs is a suit for a [illegible]

7.—**Membership of tarwad**—*Civil Procedure Code (Act XIV of 1882), s 13—Res judicata—Suit in Subordinate Court—Previous suit in Munsif's Court—Valuation of a suit for declaration as to membership of tarwad—Specific Relief Act (I of 1877), s 42*—A suit was brought in the Court of a Subordinate Judge for a declaration that the plaintiffs and defendants therein had no community of interest and were not members of a *tarwad* having joint property The property of the *tarwad* was valued by plaintiffs at R3,000, and this was held to be a true valuation, but it appeared that the value of the plaintiffs' interest in it was R2,000 only. In [illegible]

the Specific Relief Act. The value of a suit for a declaration that certain persons are or are not members of a *tarwad* is the value of the share of the *tarwad* property which would be allotted to them if a partition were made by common consent. PANGA *v* UNNIKUTTI (1900)
[I. L. R., 24 Mad., 275

8.—**Mortgage**—*Act I of 1877 (Specific Relief Act), s 42—Burden of proof—Usufructuary*

DECLARATORY DECREE, SUIT FOR— *concluded.*

5. MISCELLANEOUS SUITS—*concluded.*

mortgagee in possession seeking a declaration that [illegible]

another mortgagee in [illegible]

gagee and was still in possession, but that his mortgage still subsisted and had not been discharged. CHITTA SINGH *v.* DEBI DIN (1901)
[I. L. R., 24 All., 170

9.—**Will**—*Specific Relief Act (I of 1877),* s. 42 [illegible]

[illegible]

and his brother's son for a declaration of invalidity of a will, which purported to have been executed by his late father, and by which certain property had been bequeathed to one of the defendants Plaintiff claimed that the property was ancestral; that he was entitled to his share in it by right of survivorship, and that the testator had no power to bequeath it [illegible]

Even though the land were in the possession of tenants entitled to continue in occupation under subsisting leases, that would be no bar to a partition of the property among the members of the family. SURYANARAYANAMURTI *v.* TAMMANNA (1901)
[I. L. R., 25 Mad., 504

DECREE.

See APPEAL—
DECREES;
EXECUTION OF DECREES.

See APPELLATE COURT—INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT.

DECREE—*continued.*

See ATTACHMENT—SUBJECTS OF ATTACHMENT—
DECREES;
EXPECTANCY.
[I. L. R., 28 Calc., 483

See DECLARATORY DECREE, SUIT FOR.

See ESTOPPEL—ESTOPPEL BY JUDGMENT.
[7 C. W. N., 574

See EVIDENCE—CIVIL CASES—DECREES

See EXECUTION OF DECREE.

See EX PARTE DECREE.

See HINDU LAW—WIDOW—DECREES AGAINST WIDOW, AS REPRESENTING THE ESTATE, OR PERSONALLY.

See MONEY-DECREE.

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See RIGHT OF SUIT—DECREES.

See SALE IN EXECUTION OF DECREE.

——**adjustment, discharge or satisfaction of—**

See CIVIL PROCEDURE CODE—
s. 244—QUESTIONS IN EXECUTION OF DECREE,
[7 C. W. N., 54, 172
s. 244—PARTIES TO SUIT,
[I. L. R., 29 Calc., 696
s. 257A.

——**alteration or amendment of—**

See APPEAL—ORDERS.
[I. L. R., 28 Calc., 177

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622
[5 C. W. N., 193

——**application for amendment of—**

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . I. L. R., 30 Calc., 679

——**assignment of—**

See BENGAL TENANCY ACT, s. 148, CL. (*h*).
[6 C. W. N., 91

See CIVIL PROCEDURE CODE, s. 232

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

See SET-OFF—CROSS-DECREES.

——**consent—**

See APPEAL—DECREES.
[5 C. W. N., 877

——**construction of decree—mortgage—**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.
[6 C. W. N., 5

DECREE—*continued.*

——contract in derogation of—

See Civil Procedure Code, s. 244—Questions in Execution of Decree.
[6 C. W. N., 798

——definition of—

See Civil Procedure Code, s 2—"Decree," Definition of.

——effect of—

See Possession—

Nature of Possession ;
[I. L. R., 29 Calc., 208

Suits for Possession.
[5 C. W. N., 234

See Possession, Order of Criminal Court as to—Decision of Magistrate as to Possession.
[5 C. W. N., 563

——execution of—

See Appeal—Execution of Decree

See Execution of Decree

——ex parte—

See Civil Procedure Code, s 108

See Right of Suit—Fraud
[I. L. R., 29 Calc., 395

——finality of—

See Sale in Execution of Decree—Mortgaged Property
[I. L. R., 24 All., 549

——form of—

See Co-sharers—Enjoyment of Joint Property—Erection of Buildings
[I. L. R., 30 Calc., 901

See Restitution of Conjugal Rights
[I. L. R , 28 Calc., 37

See Vendor and Purchaser—Invalid Sales . I. L. R., 26 Bom., 159

——fraudulent—

See Fraudulent Decree

——joint liability under—

See Contribution, Suit for—Payment of Joint Debt by one Debtor

——Magistrate to respect—

See Possession, Order of Criminal Court as to—

Decision of Magistrate as to Possession; 6 C. W. N., 841

Disputes as to Right of Way Water, etc., 6 C. W. N., 161

DECREE—*continued*

——Magistrate to respect—*concluded.*

See Nuisance—Under Criminal Procedure Code . 6 C. W. N., 466

——on compromise—

See Compromise—Compromise of Suits under Civil Procedure Code
[5 C. W. N., 485

——reversal of—

See Right of Suit—Fraud.
[7 C. W. N., 353

——reversal of whole, on appeal by one defendant—

See Civil Procedure Code, s. 544.

——set aside; application for refund of amount of—

See Limitation Act, 1877, Sch. II, Arts 178, 179 . I. L. R., 28 Calc., 113

——transfer of, for execution—

See Civil Procedure Code, s. 232
[I. L. R., 29 Calc., 235

See Set-off—Cross-decrees
[I. L. R., 26 Mad., 428

——variation of, on appeal by some of joint appellants—

See Civil Procedure Code, s 544
[I. L. R., 25 Bom., 699

1 CONSTRUCTION OF DECREE

(a) Consent Decree

1.—*Breach of contract by decree-holder*—By a consent decree on a mortgage it was provided that, if the decree-holder received a fixed sum by a fixed [illegible] the price, execute a deed of consent *Held* that it was a breach of contract by the decree-holder to [illegible] oney was [illegible] ade of all [illegible] endered it [illegible] the fixed [illegible] ould only [illegible] g in the same position as if he had refused a tender thereof. Harendra Lal Roy Chowdhry v Maharani Dasi (1901)

[I. L. R., 28 Calc., 557 : s.c., 5 C. W. N., 538 ; L. R., 28 I. A., 89

DECREE—*continued.*

1. CONSTRUCTION OF DECREE—*concluded.*

(*b*) MORTGAGE.

2.—*Decree on mortgage—Interest up to date of payment—Transfer of Property Act (IV of 1882), ss 88 and 97—Civil Procedure Code (Act XIV of 1882), Sch IV, Form 109—Construction of decree—Ambiguity.*—Where there is no ambiguity in a decree, the duty of the executing Court is to carry the orders of the decree into effect, as being conclusive between the parties, whether it may or may not be disputable in point of law. It is competent for a Court passing a mortgage decree to give interest beyond the date fixed

[illegible]

the presumption that s 88 was framed with reference not to the running of interest but to the determination of the time for redemption or sale alternatively, and the form of suit sanctioned by Form No. 109 of Sch IV, Civil Procedure Code, s 88 of the Transfer of Property Act should not be so

[illegible]

HARAJAH

[illegible] A., 35; I. L. R., 23 All., 181

2 ALTERATION OR AMENDMENT OF DECREE.

3.—**Compromise**—*Civil Procedure Code (Act XIV of 1882), s 206—"Judgment"—Consent decree—Amendment—Clause not contained in petition of compromise, added in decree—True intention of parties*—Where, the parties to a suit having entered into a compromise, a decree was ordered to be entered up in terms of the petition of compromise, but, owing to some ambiguity in the petition of compromise, a passage, which was not contained in the petition, was inserted in the decree with the knowledge and consent of both parties: *Held* that the decree gave expression to the true intention of the compromising parties, and ought not to be amended. *Per* MACLEAN, C J—The judgment here (ordering a decree to be entered up in terms of the petition of compromise) was not such a judgment as is contemplated by s 206, Civil Procedure Code, there being no expression of judicial opinion on the merits of the case RAMESHWAR PROSAD NARAIN SINGH *v.* CHANDRESHWAR PROSAD NARAIN SINGH (1903) . 7 C. W. N., 880

DECREE—*concluded.*

2. ALTERATION OR AMENDMENT OF DECREE—*concluded.*

4.—**Limitation**—*Civil Procedure Code (Act XIV of 1882), s. 206—Limitation Act (XV of 1877), Sch. II, Art. 179 (3).*—A decree was passed on 31st December, 1892, and no appeal was presented by either party therefrom. Defendant No 2, however, filed a petition for amendment of the decree in respect of the costs, which was granted on the 6th October, 1893. On 6th July, 1896, defendant

[illegible]

Court determining the amount of costs must be treated as a continuation or completion of the judgment, and the amendment made was therefore substantially made on review of judgment, and Art. 179 (3) of Sch. II to the Limitation Act applied. VENKATA JOGAYYA *v.* VENKATASIMHADRI JAGAPATIRAZU (1900) . . I. L. R., 24 Mad., 25

5.—**Omission in judgment**—*Civil Procedure Code (Act XIV of 1882), ss. 206, 622—Omission in judgment—Decree in conformity with judgment—Amendment of decree under s. 206—Remedy by appeal—Inadmissibility of revision petition—Limitation Act (XV of 1877), s. 5.*—Defendants in a suit held certain land on lease from plaintiff, who alleged that they had encroached upon his land and by that means held more than the area to which they were entitled. He sued for possession of the excess, and also claimed arrears of rent. Defendants denied the alleged encroachment, and pleaded that if it should be proved they were willing to pay increased rent They also admitted liability in respect of the arrears of rent The encroachment was proved, and the District Munsif gave judgment declaring defendants liable for increased rent in proportion, a decree being drawn up in similar terms Both judgment and decree omitted to award the amount admittedly due as arrears of rent. Plaintiff thereupon presented a petition to the District Munsif, who ordered the decree to be amended so as to render defendants liable for the said arrears This order was passed more than one month from the date of the decree Upon a petition being preferred by defendants in the High Court against the District Munsif's order of amendment: *Held* that the petition was not admissible, inasmuch as it was open to the petitioner, under s. 5 of the Limitation Act, to appeal against the decree as amended, notwithstanding that a month had expired from the date of the decree *Nanda Rai v. Raghunandan Singh, I. L. R., 7 All., 282,* considered. VISVANATHAN CHETTI *v.* RAMANATHAN CHETTI (1901) . . I. L. R., 24 Mad., 646

DECREE-HOLDER

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES [I. L. R., 29 Calc., 548

DECREE-HOLDER—*concluded.*

——**breach of contract by—**

See DECREE—CONSTRUCTION OF DECREE —CONSENT DECREE [I. L. R., 28 Calc., 557

——**minor—**

See LIMITATION ACT, 1877. [I. L. R., 28 Calc., 465

DEED

See DOCUMENT

——**attestation of—**

See EVIDENCE ACT, s 68 [6 C. W. N., 395

——**construction of—**

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.

See GRANT—CONSTRUCTION OF GRANTS

See LEASE—CONSTRUCTION.

See MORTGAGE—POSSESSION UNDER MORTGAGE . I. L. R., 25 All., 237

——**execution of—**

See HUSBAND AND WIFE [6 C. W. N., 809

See PARDANASHIN WOMEN. [I. L. R., 28 Calc., 546

——**of assignment—**

See DEBTOR AND CREDITOR. [I L. R., 26 Bom., 577

——**of sale—**

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS

——**registration of—**

See REGISTRATION ACT (III OF 1877)

——**suit to set aside—**

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

1 EXECUTION.

1.—Proof of execution—*Evidence Act (I of 1872), s 68—Transfer of Property Act (IV of 1882), s 59—Attesting witness—Mortgage—Writer of the deed*—A person who is present and witnesses

DEED—*continued.*

1. EXECUTION—*concluded.*

[illegible]

2.—Signature—*Execution of deed—Registration—Admission of signature before Registrar—* [illegible]

mortgage bond for R21,750 on account of *hundis* executed by me is correct," it shows that he gave [illegible] that is [illegible] valid

[illegible] 329

2 ATTESTATION

3.—Sufficiency of attestation—*Transfer of Property Act (IV of 1882), s 59—Attestation of mortgage-bond—Meaning of the word "attested"—Attestation in the presence of the mortgagor after having received from him a personal acknowledg-* [illegible]

merely on the mortgagor's admission of his [illegible]

attested within the meaning of s 59 where the witnesses have signed it in the presence of the mortgagor [illegible]

[I. L. R., 27 Bom., 91

4.—Time of attestation—*Evidence Act (I of 1872), ss 70, 114—Transfer of Property Act (IV of 1882), s 59—Mortgage-deed, proof of—Attesting witness*—Where a mortgage-deed, on the face of it, showed that it was attested by two witnesses, one of whom was the writer, whose denial of execution of the deed by the mortgagee had been found by the Court of Appeal below to be false, and the other witness said that the mortgagee signed in his presence but he was not able to remember whether the mort-

DEED—*concluded.*

2. ATTESTATION—*concluded.*

gagee signed also in the presence of the writer, and it appeared that the writer's signature preceded that of the other witness: *Held* that, under the circum-

NITAI CHURN BUNDOPADHYA (1903)
[7 C. W. N., 384

5.—Witness writing name of executant—*Transfer of Property Act (IV of 1882), s. 59—Mortgage-bond, proof of — Witness writing the name of executant, whether an attesting witness—Practice—Remand.*—Where a lady executed a mortgage-deed by putting her finger-mark to the same, and a person who saw her put the finger-mark wrote her name at her request and the words "by the pen of" preceding his name written by himself: *Held* that he was an attesting witness, and the words "by the

that at least two of the persons whose names appeared on the face of the document were attesting witnesses. DINAMOYEE DEBI *v.* BON BEHARI KAPUR (1902)
[7 C. W. N., 160

3. CONSTRUCTION.

6.—Absence of reservation—*Deeds of mort-*

or reservation, and are otherwise apt for the purpose, they convey all the interest in the *zamindari* which was possessed by the former owners, including profit rentals of bazars built on lands not shown to have been severed therefrom ASHGAR REZA KHAN *v* MAHOMED MEHDI HOSSEIN KHAN (1903)
[L. R., 30 I. A., 71: s.c. 7 C. W. N., 482; I. L. R., 30 Calc., 556

DEFAMATION.

See ABATEMENT OF SUIT—APPEALS
[I. L. R., 26 Bom., 597

See JURISDICTION OF CIVIL COURT—CASTE . . I. L. R., 26 Bom., 174

See LIBEL.

See PRIVILEGED COMMUNICATION.
[7 C. W. N., 246

See SLANDER.

DEFAMATION—*continued.*

——suit for—

See SECRETARY OF STATE.
[I. L. R., 27 Bom., 189

1.—Answers to Police officer—*Damages—Action for damage—Investigation—Police officer—Witnesses—Privilege.*—No action for damages lies against a person for what he states in answer to

[I. L. R., 28 Calc., 794: s.c. 5 C. W. N., 804

2.—Charge—*Publication—Malice, omission to apologise no proof of—Penal Code (Act XLV of 1860), ss. 499 and 500—Criminal Procedure Code (Act V of 1898), s. 222*—Where an accused person was convicted of defamation under s. 500 of the Penal Code, upon a charge which set out that the defamation was committed on or about the 12th day of April, and afterwards, by describing the

delivery of such a receipt was not a publication such as would render the accused liable to punishment for defamation, nor could the omission of the accused to apologise to the complainant subsequently, for the use of the caste designation, be taken as indicating that he used it at the time with a malicious intention BISHWANATH DAS *v.* KESHAB GANDHABANIK (1902)
[I. L. R., 30 Calc., 402: s.c. 7 C. W. N., 74

3.—Imputation on a wife—*Criminal Procedure Code (Act V of 1898), s. 4 (h), Chap. XV, Part B, ss. 191, 195, 196, 198, 199, and s. 345—Penal Code (Act XLV of 1860), s 499, Expl. I—Defamation of wife — Complaint by husband—Aggrieved party*—*Held* by the Full Bench (RANADE, J., dissenting) that, under the provisions of the

. . . I. L. R., 25 Bom., 1..

4.—Municipal officers—*Indian Penal Code (Act XLV of 1860), s. 500—Criminal Procedure*

poses of the point of law to be determined, were assumed to be defamatory. These related to the conduct of certain subordinate officers of the Madras

DEFAMATION—*concluded.*

Municipal Commission. A complaint was lodged by

"person aggrieved" within the meaning of s. 198 of the Code of Criminal Procedure BEAUCHAMP v. MOORE (1902) . . I. L. R., 26 Mad., 43

an intent that the person who makes or publishes any

6.—Statement in pleadings—*Penal Code (Act XLV of 1860), ss 499, 500—Statement made in a plaint—Pleadings, statement of parties in, whether privileged—Parties and witnesses, distinction between statements made by*—Statements

BASU (1900) . . . 5 C. W. N., 293

7.—True statement—*Penal Code (Act XLV of 1860), ss 499, 500—True statement that*

DEFENDANT.

See PARTIES—SUBSTITUTION OF PARTIES—DEFENDANTS.

DEFENDANT—*concluded.*

See PRACTICE—CIVIL CASES—OPENING CASE FOR DEFENDANT.

See RES JUDICATA—PARTIES—CO-DEFENDANTS.

——death of—

See ABATEMENT OF SUIT. [I. L. R., 25 All., 206

See CIVIL PROCEDURE CODE, s 108. [I. L. R., 29 Calc., 33

See MALICIOUS PROSECUTION [I. L. R., 26 Mad., 499

See PARTIES—SUBSTITUTION OF PARTIES—DEFENDANTS.

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

——s. 3—

—*Land-revenue—Suit for land-revenue not a suit for rent*—A suit for land-revenue does not fall under s. 3 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) The liability for land-revenue does not spring from a contractual engagement, and a claim in respect thereof is not one for rent or damages within the meaning of cl. (*x*) of s 3 of the Act. GULAM JILANEE v. KASHINATH BAPUJI DANI (1900) . . . I. L. R., 25 Bom., 244

——ss. 3, 15A—

See MORTGAGE—CONSTRUCTION. [I. L. R., 26 Bom., 252

——s. 22—

behalf of the defendants that the covenant to pay the produce did not amount to a "specific mortgage" of the land, and that consequently the sale to the plaintiff was invalid under s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). *Held* that the land was specifically mortgaged for the repayment of the debt, and that the sale was valid and the plaintiff was entitled to recover possession. BALSHET v. DHONDO RAMKRISHNA (1901) [I. L. R., 26 Bom., 3

DELAY.

See ARBITRATION—AWARDS—DELAY IN MAKING AWARD. [I. L. R., 26 Bom., 132

See PRACTICE—CIVIL CASES—SECURITY FOR COSTS . . 5 C. W. N., 119

See SPECIFIC PERFORMANCE—GENERALLY. [I. L. R., 30 Calc., 265

——in presenting appeal—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES . . L. R., 30 I. A., 20

See MADRAS RENT RECOVERY ACT, s. 69. [I. L. R., 24 Mad., 558

——prevention of—

See CRIMINAL PROCEEDINGS [I. L. R., 26 Bom., 552

DELEGATION OF AUTHORITY, POWERS OR FUNCTIONS.

See ARBITRATION—DUTIES AND POWERS OF ARBITRATORS [L. R., 29 I. A., 168

See LEGAL PRACTITIONERS ACT, 1879, s. 36 . . . 6 C. W. N., 289

See SECURITY FOR GOOD BEHAVIOUR [I. L. R., 25 All., 272

DENIAL OF TITLE.

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

See TITLE, DENIAL OF.

DEPOSIT.

——in Court, of debt—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES [I. L. R., 30 Calc., 425

See TRANSFER OF PROPERTY ACT, s. 83 [I. L. R., 25 All., 179

——of Government Securities—

See LIMITATION ACT, 1877, SCH. II, ART. 145 . . . 7 C. W. N., 476

——of money—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS. [I. L. R., 30 Calc., 262

——of mortgage money—

See MORTGAGE—REDEMPTION—MISCELLANEOUS CASES I. L. R., 27 Bom., 23

——of rent—

See BENGAL TENANCY ACT, SCH. III, ART. 2 (*a*) . . I. L. R., 29 Calc., 283

DEPOSIT—*concluded*

——to stay sale—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

DEPOSITARY.

See LIMITATION ACT, 1877, SCH. II, ARTS. 48, 49 AND 145 [I. L. R., 26 Bom., 430

DEPOSITION.

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

DEPUTY COMMISSIONER.

—Magistrate of first class [illegible] to Sessions [illegible] Procedure C[illegible] conferring special powers on District Magistrates—Jurisdiction.—A Magistrate of the first class who is holding an inquiry in a case of dacoity has jurisdiction either to commit the accused to the Court of Session or to discharge him. He has no authority to make over the case to a District Magistrate who is a Deputy Commissioner specially empowered under s 30, Code of Criminal Procedure, to try such cases But where it was found that an accused person who had been convicted by the District Magistrate in a case thus made over to him had not been prejudiced at the trial, the High Court maintained the conviction. AMIR KHAN *v.* KING-EMPEROR (1902) . . . 7 C. W. N., 457

DEPUTY MAGISTRATE.

See APPEAL IN CRIMINAL CASE—ACQUITTALS, APPEALS FROM [I. L. R., 26 Mad., 478

DESIGN.

See INVENTIONS AND DESIGNS ACT, s 51. [I. L. R., 25 All., 493

DESTRUCTION.

——of articles unfit for human food—

See CALCUTTA MUNICIPAL ACT (BEN ACT III OF 1899), ss 502, 505 [I. L. R., 30 Calc., 421

DETENTION OF ACCUSED BY POLICE.

—Detention in police-custody by order of Magistrate—Sufficient reasons, recording of—Criminal Procedure Code (Act V of 1898), [illegible]

[illegible]

detention that the accused was wanted by the Police

DETENTION OF ACCUSED BY POLICE—*concluded*.

[illegible]

DILUVION.

See LIMITATION ACT, 1877.
[I. L. R., 29 Calc., 518

DIRECTORS.

See COMPANY—WINDING UP—LIABILITY OF DIRECTORS AND OFFICERS.
[I. L. R., 29 Calc., 688

DISABILITY.

See LIMITATION ACT, 1877, s. 7.
[5 C. W. N., 545

DISCHARGE OF ACCUSED.

See COMPENSATION—CRIMINAL CASES—*TO ACCUSED, ON DISMISSAL OF COMPLAINT.*

See COMPLAINT—DISMISSAL OF COMPLAINT

See CRIMINAL PROCEEDINGS.
[I. L. R., 28 Calc., 104

See REVISION, CRIMINAL CASES—DISCHARGE OF ACCUSED.

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES
[I. L. R, 25 Bom., 422

——improper discharge—

See CRIMINAL PROCEDURE CODE, s 436
[5 C. W. N, 574

——re-opening of proceedings after—

See CRIMINAL PROCEDURE CODE, s 437.
[6 C. W. N., 163

[illegible]

[illegible] the words in s 209 of the Criminal Procedure Code "sufficient ground for committing" do not mean sufficient ground for convicting, but refer to a case in which the evidence is sufficient to put the accused on his trial, and such a case arises when credible witnesses [illegible]

[illegible] exercises a wrong discretion if he takes upon himself to discharge an accused in the face of evidence

DISCHARGE OF ACCUSED—*continued*.

which might justify a conviction. EMPEROR *v.* VARJIVANDAS (1902) . I. L. R., 27 Bom., 84

2 —**Revival of proceedings**—*Presidency Magistrate* [illegible] *(Act* [illegible] *Wheth*[illegible] by the [illegible] Presidency Magistrate is competent to re-hear a warrant-case triable under Ch. XXI of the Code of Criminal Procedure, in which he has discharged the accused person. *Held* by GHOSE, J —Where a Presidency Magistrate, by reason of the absence of the complainant, and without pronouncing any opinion as to the guilt or innocence of the accused, strikes off the case, his order is not a judg-[illegible]

[illegible] *(1895), 1 C W. N*, 49, approved of. DWARKA NATH MONDUL *v* BENI MADHAB BANERJEE (1901)
[I. L. R., 28 Calc, 652: s.c. 5 C. W. N., 457

3. ———— *Criminal Procedure Code (Act V of 1898), ss. 209, 436—Refusal by Magistrate to charge accused with offence triable exclusively by Court of Session—"Discharge"—Charge of offence triable by Magistrate—Acquittal—Order by Sessions Court for further inquiry and* [illegible] a further charge to be framed under s 4?7 of the [illegible]

4. ———— *Warrant-case—Process, re-issue of, against accused in respect of the same offence—Magistrate, Provincial or Mofussil,*

DISCHARGE OF ACCUSED—*continued.*

powers of—Whether order for further inquiry necessary before re-issue of process—Judgment—

v. Mahomed

W. N., 633

5. ——— *Criminal Procedure Code (Act V of 1898), s. 435 (4)—Refusal by Sessions Judge to commit for trial—Subsequent commitment by District Magistrate, after taking up the case suo motu—Legality.*—A second-class

District Magistrate took up the case *suo motu*, and directed the commitment of the accused for trial at the Sessions Court on a charge of murder On reference being made to the High Court for orders:

section was to avoid a conflict between the orders of two District authorities having co-ordinate powers, and that reason applied equally to cases in which the authorities acted *suo motu* Kalimuthu v. Emperor (1902) . I. L. R., 26 Mad., 477

6 ——— *Case revised by Chief Presidency Magistrate and transferred for*

DISCHARGE OF ACCUSED—*concluded.*

Bench for hearing. *Held* that the Honorary Bench

C. W. N.

DISCOVERY.

See New Trial . 6 C. W. N., 809

See Practice—Civil Cases—Inspection and Production of Documents.
[I. L. R., 28 Calc., 424

See Secretary of State
[I. L. R., 27 Bom., 189

DISCRETION OF COURT.

See Charge—Alteration or Amendment of Charge . 6 C. W. N., 72

See Co-sharers—Enjoyment of Joint Property—Erection of Buildings
[I. L. R., 30 Calc., 901

See Costs—Appeal 7 C. W. N., 647

See Execution of Decree—Stay of Execution . . 5 C. W. N., 718

See False Charge . 5 C. W. N., 106

See Injunction—

Under Civil Procedure Code ;
[I. L. R., 26 Mad., 168

Special Cases—Possession of Joint Property.
[I. L. R., 29 Calc., 500

See Interest.

See Sanction for Prosecution—Discretion in granting Sanction

See Special or Second Appeal—

Orders subject or not to appeal ;
[I. L. R., 25 All., 71

Grounds of Appeal—Evidence, Mode of dealing with ;
[I. L. R., 23 All., 121

Other Errors of Law or Procedure—Discretion, Exercise of.

See Witness—Civil Cases.
[I. L. R., 28 Calc., 37

See Witness—Criminal Cases—Summoning Witnesses.
[I. L. R., 30 Calc., 508

DISHONOUR, NOTICE OF.

See Hundi—Notice of Dishonour

See Negotiable Instruments Act, s 93.
[I. L. R., 26 Mad., 239

DISMISSAL OF APPEAL.

See Appeal—Default in Appearance.

DISMISSAL OF COMPLAINT.

See COMPENSATION—CRIMINAL CASES—TO ACCUSED, ON DISMISSAL OF COMPLAINT

See COMPLAINT—DISMISSAL OF COMPLAINT.

DISMISSAL OF SUIT.

See CIVIL PROCEDURE CODE, s 158. [I. L. R., 23 All., 462

——for default in appearance—

See CIVIL PROCEDURE CODE—

s 99;

ss. 103 AND 103.

—A declaration affecting the plaintiff in a suit which is dismissed is not legal. CHHOTU MAHTON *v* SHEOBARTI KOER (1901) . . 5 C. W. N., 445

DISPOSSESSION.

See BENGAL TENANCY ACT, SCH. III, ART. 3

See CONTRIBUTION, SUIT FOR—

CO-SHARERS, LIABILITY OF; [6 C. W. N., 903

JOINT WRONG-DOERS [6 C. W. N., 88

See CRIMINAL PROCEDURE CODE, s. 522. [5 C. W. N., 250

See LANDLORD AND TENANT—LIABILITY FOR RENT . . 5 C. W. N., 353

See LIMITATION ACT, 1877, SCH. II, ART. 165 . . I. L. R., 25 All., 343

See POSSESSION—SUITS FOR POSSESSION

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE

——by co-shebait—

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . 5 C. W. N., 273

——in execution of decree—

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

DISQUALIFICATION.

——of Magistrate—

See MAGISTRATE—GENERAL JURISDICTION . . I. L. R., 24 Mad., 238

——to inherit—

See HINDU LAW—

INHERITANCE—DIVESTING OF, OR EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE;

WIDOW—DISQUALIFICATIONS.

DISTRAINT OR DISTRESS.

See BENGAL TENANCY ACT, ss. 121, 122 AND 140 . I. L. R., 28 Calc., 364

See MADRAS RENT RECOVERY ACT, ss 15, 17 AND 18. [I. L. R., 25 Mad., 503

See N.-W. P. RENT ACT, s 56. [I. L. R., 24 All., 127

See PENAL CODE, s. 186. [I. L. R., 30 Calc., 285

——no presumption of legality of—

See PENAL CODE, s. 424. [I. L. R., 25 Mad., 729

——wrongful—

See WRONGFUL DISTRAINT

DISTRIBUTION OF SALE-PROCEEDS.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES [I. L. R., 29 Calc., 803

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS

DISTRICT COURT.

See CONTEMPT OF COURT—CONTEMPT GENERALLY . I. L. R., 26 Mad., 494

——appeal to—

See APPEAL—ORDERS—ORDER REFUSING APPLICATION TO BE DECLARED INSOLVENT . . I. L. R., 27 Bom., 601

DISTRICT JUDGE, JURISDICTION OF.

See TRANSFER OF CIVIL CASE—GENERAL CASES . I. L. R., 24 All., 304, 356
" 25 All., 183

—*Civil Procedure Code (Act XIV of 1882) ss 25, 191 (2)—Suit commenced in a District Court—Issues settled by District Judge—Case transferred to Sub-Court by High Court—Decision by Sub-Judge—Appeal to, and decision of, District Judge—Validity of decision in appeal and of transfer by High Court*—A suit was instituted in a District Court, and issues were settled by the District Judge The suit was then transferred by the High Court to the Court of the Subordinate Judge, who decided the case. An appeal was then preferred to and was heard by the District Court, though the Judge who heard the appeal was not the Judge who had settled the issues. On a second appeal being preferred to the High Court: *Held* (1) that the District Court had jurisdiction to hear the appeal, s 17 of the Madras Civil Courts Act (III of 1873) having no application; (2) that the High Court had jurisdiction, under ss. 25 and 191 (2) of the Code of Civil Procedure, to make the transfer to the Subordinate Judge, although the case

DISTRICT JUDGE, JURISDICTION OF —*concluded.*

was in part heard. PALANISAMI COWNDAN *v.* THONDAMA COWNDAN (1902)
[I. L. R., 26 Mad., 595

DISTRICT MAGISTRATE.

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES—DUTY OF MAGISTRATE.
[6 C. W. N., 843

See MAGISTRATE—

GENERAL JURISDICTION;
[I. L. R., 30 Calc., 449

POWERS OF MAGISTRATES.
[I. L. R., 29 Calc., 242

See REVISION—CRIMINAL CASES—ACQUITTALS . . . 7 C. W. N., 493

——powers of—

See SECURITY FOR GOOD BEHAVIOUR
[I. L. R., 29 Calc., 455

DIVESTING OF PROPERTY.

See HINDU LAW—

ADOPTION—EFFECT OF ADOPTION;

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

WIDOW—DISQUALIFICATIONS

DIVORCE.

See DIVORCE ACT.

See MAHOMEDAN LAW—DIVORCE

DIVORCE ACT (IV OF 1869).

1.—Costs—*Divorce—Wife's costs—Dismissal of wife's petition—Liability of husband—Deposit or security for costs*.—In a divorce suit, where it is shown that the wife has no money of her own, the mere fact that no deposit has been made or security given for payment of the wife's costs is no obstacle

e husband to
is dismissed.
6 P. D., 119,
. D., 141; and
5 Calc., 357,

W. N., 565

aa
di
ad
an
to
in

—s. 7—*Husband and wife—Wife's costs, application for—Foreign domicile—Property of wife.*—

DIVORCE ACT (IV OF 1869)—*continued.*

On an application by the wife for her costs during the pendency of her suit for judicial separation and her husband's suit for divorce: *Held* that a wife, whose property is retained by her husband, is entitled to her costs. *Also* that, inasmuch as the parties are domiciled abroad, and the law of that country is not before the Court, s 7 of the Divorce Act applies, and the Court will act on the general principles of English law. *Mayhew* v. *Mayhew (1895), I. L. R., 19 Bom., 293*, followed. GEORGUCOPULAS *v.* GEORGUCOPULAS (1902) . I. L. R., 29 Calc., 619

—ss. 7, 11 and 45—*Divorce—Parties—Intervention—Jurisdiction—Alleged adulteress, application by—Civil Procedure Code (Act XIV of 1882), s 32.*—In a wife's suit for divorce against the

the Act does not apply to procedure S 32 of the Civil Procedure Code (Act XIV of 1882) cannot apply to the case of substitution, dismissal or addition of parties in divorce proceedings *Bell* v. *Bell (1883), L. R., 8 P. D., 217*, *Abbot* v. *Abbot (1869), 4 B. L. R (O C), 61*, and *Lowe* v. *Lowe (1899), P. D., 204*, referred to RAMSAY *v* BOYLE (1903) . . . I. L. R., 30 Calc., 489

——— *Matrimonial Causes Act (20 & 21 Vict., c. 85), s 28—Civil Procedure Code (Act XIV of 1882), s. 32—Suit for dissolution of marriage—Wife's petition—Husband's incestuous adultery—If alleged adulteress can intervene—High Court's jurisdiction*.—In a wife's petition for

l on the
has no
the said
a party
No. 6
P., 8
51;
to
04

—s. 35—*Divorce—Condonation—Revival—Co-respondent—Costs—Evidence of misconduct on a date after suit*.—Where a husband has condoned adul-

—s. 36—*Divorce—Security for wife's costs—Absence of means of wife—Alimony pendente lite—Reference to Registrar.*—In a suit for divorce between persons subject to the Indian Succession Act,

DIVORCE ACT (IV OF 1869)—*concluded.*

the mere fact that the wife has no means of her own is not such a special circumstance as will justify the

——s. 45—

See ante, ss. 7, 11, and 45

See Costs—Special Cases—Divorce.
[I. L. R., 28 Calc., 84

DOCUMENT

See Deed.

See Pardanashin Women—Execution of Document by.
[I. L. R., 29 Calc., 749

See Practice—Civil Cases—Inspection and Production of Documents.

See Recitals in Documents

——alteration of—

See Contract—Alteration of Contracts

See Limitation Act, 1877, s. 19—Acknowledgment of Debts
[I. L. R., 26 Bom., 128

——construction of—

See Evidence—Parol Evidence—Varying or Contradicting Written Instruments . I. L. R., 25 All., 337

See Gift . I. L. R., 23 All., 309

——construction of Wajib-ul-urz—

See Hindu Law—Will—Construction of Will—Adoption.
[I. L. R., 24 All., 195

See Pre-emption—Construction of Wajib-ul-urz

——explanation of, to pardanashin women—

See Pardanashin Women
[I. L. R., 28 Calc., 546

——suit for cancellation of—

See Declaratory Decree, Suit for—Suits concerning Documents

——thirty years or more old—

See Evidence Act (I of 1872), s 90

1.—Alteration of—*Material alteration—Material alteration in a written acknowledgment of a debt does not render it inoperative and*

DOCUMENT—*concluded.*

ineffective—Limitation.—The rule of English law that a material alteration of a document by a party to it after its execution, without the consent of the other party, renders it void, is in force in India.

2.—Execution of—

to be set aside—Fraud—A document is a nullity, where the executant of it signed only on the first page but did not sign on the other pages, having discovered that it was not in accordance with the terms previously agreed upon; such a document

(1895), I L. R, 23 Calc, 460; and *Raghubar Dyal Sahu* v. *Bhikya Lal Misser (1885), I. L. R, 12 Calc, 69,* referred to A suit to recover possession of immovable property by setting aside a document on the ground of fraud, but which document does not require to be set aside or cancelled, is governed by Art 142 and not by Art 91, Sch II, of the Limitation Act (XV of 1877) Banku Behari Shaha v. Krishto Gobindo Joardar (1902)
[I. L. R., 30 Calc., 433

DOCUMENTARY EVIDENCE.

See Evidence—

Civil Cases;

Criminal Cases

DOMICILE.

See Foreign Court, Judgment of.
[I. L. R., 29 Calc., 509

See Hindu Law—Widow—Interest in Estate of Husband—By Inheritance . I. L. R., 24 Mad., 650

——foreign—

See Divorce Act (IV of 1869), s. 7.
[I. L. R., 29 Calc., 619

DOWER.

See Mahomedan Law—Dower.

DRUGS.

See Bombay Abkari Act (Bom Act V of 1878), ss. 3 (9) and 62
[I. L. R., 27 Bom., 551

DUTIES.

—— liability of Government to—

See MADRAS CITY MUNICIPAL ACT, s. 341. [I. L. R., 25 Mad., 457

DWELLING-HOUSE.

See REGISTRAR OF HIGH COURT—SALE BY REGISTRAR . 5 C. W. N., 593

DYING DECLARATION.

See EVIDENCE—CRIMINAL CASES—DYING DECLARATION.

E

EASEMENT.

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.

See PRESCRIPTION—EASEMENTS

See RIGHT OF WAY

See RIGHT TO USE OF WATER

—— dispute concerning—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC.

1.—**Evidence**—*Order unsupported by evidence—Criminal Procedure Code (Act V of 1898), s. 147.*—In proceedings under s. 147 of the Criminal Procedure Code, the first party filed their written statement, and the Magistrate, having declined to give the second party time to file their written statement, made an order under that section in favour of the first party, without recording any evidence. *Held* that the Magistrate ought to have had some evidence in proof of the allegations contained in the written statement; and that, there

2.—**Tenant**—*Easement, right of—Whether a tenant having permanent interest on the land could acquire such right in other land of his lessor—Osat taluqdar.*—A tenant of land, even if having a permanent right of tenancy on the land, cannot

3.—**Water**—*Easements Act (V of 1882), ss. 7, 17—Right to raise crest level of calingula of tank—Submersion of lands thereby—Right of owner of such lands to protect them from sub-*

EASEMENT—*continued.*

mergence.—The defendants, being the holders of land situated below a tank, had, for a period of over twenty years, by means of a dam, raised the calingula of the tank higher than its crest level. The effect had been to collect an increased quantity of water

defendants on the calingula should be removed so that water should be stored in the tank only to the height of the crest level of the calingula: *Held* that the defendants had not exceeded the right which they had been proved to have acquired. *Semble* that, notwithstanding that right, plaintiffs were entitled to take measures to save their lands from being submerged NARAYANA REDDI *v.* VENKATA CHARIAR (1900) . . I. L. R., 24 Mad., 202

4.—————*Easements Act (V of 1882), s 13—Purchase of land by Government at sale for arrears of revenue—Right of irrigation by way of easement—Assessment of raiyats in occupation.*—In 1846, certain villages, forming part of a *zamindari*, were brought to sale by Government

The *zamindar* had himself occupied the wet lands

authority of Government. In 1854, the Board of Revenue directed that no portion of the assessment should be credited to the *zamindar*, who now sued for a declaration of his right, and for the amount since collected. *Held* that the *melvaram* right in the villages passed, by the sale, to the Government, who were entitled by easement, to have the lands irrigated from the then existing source of irrigation, and to levy wet assessment on them. *Also* that the action of the Settlement Department in assessing the consolidated wet rate was right, and that plaintiff

FOR INDIA IN COUNCIL (1902) [I. L. R., 26 Mad., 51

5.—————*Easements Act (V of 1882), s 13 (c)—Grant of village as inam—Right to water for irrigation—Area under wet cultivation at time of grant subsequently increased—Claim by inamdar for proportionate increase of water for irrigation*—In 1859 a village

EASEMENT—*concluded.*

with land comprising 339 acres was granted by Government, as *inam,* to plaintiff. At the time of the grant, 106 09 acres were under wet cultivation, the remainder being *poramboke,* prior minor *inams* and land under dry cultivation. The area of land under wet cultivation was subsequently increased, and plaintiff claimed to be entitled to water for the irrigation of this increased area without paying assessment thereon, and, in 1870, the Collector of the district permitted that increase. Plaintiff had now been assessed in respect of the increased area, and brought this suit for a declaration of his right and for a refund of the money paid by him under protest *Held* that plaintiff was entitled, under s. 13 (c) of the Easements Act, to irrigate 106 09 acres, and no more *Also* that the action of the Collector in 1870 was unauthorised and had not been subsequently ratified by Government, and was not binding on Government CHIDAMBARA RAO *v* SECRETARY OF STATE FOR INDIA IN COUNCIL (1902) . . . . I. L. R., 26 Mad., 66

6.— — — ——*Customary right—Use of water and water-course—Riparian rights—Irrigation—Continuous use—Interruption—Unreasonable rights—Nuisance*—An easement which is not a customary right need not be reasonable An easement may be established of the right to cause river-water to flow across the servient tenement on to the dominant tenement for the purpose of irrigation, by means of embankments erected on the dominant tenement. In establishing such easement, it is immaterial whether the exercise of the right is continuous, provided it has been exercised for the statutory period, during seasons of drought, when it could be taken advantage of *Cooper* v *Barber (1810), 3 Taunt, 99, Whalley* v. *Lancashire and Yorkshire Railway Company (1884), L. R, 13 Q. B. D, 131,* and *Rylands* v. *Fletcher (1866), 3 H. L, 330,* distinguished *Hollins* v. *Verney (1884), L. R, 13 Q B. D, 304,* doubted BUDHU MANDAL *v* MALIAT MANDAL (1903)

[I. L. R., 30 Calc, 1077

EASEMENTS ACT (V OF 1882).

See PRESCRIPTION—EASEMENTS

——ss. 7 and 17—

See EASEMENT . I. L. R., 24 Mad., 202

——s. 13—

See EASEMENT.

[I. L. R., 26 Mad., 51, 66

——s. 23—

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . I. L. R., 26 Bom., 374

EJECTMENT.

See LANDLORD AND TENANT—

NATURE OF TENANCY;

[5 C. W. N., 846

EJECTMENT.

EJECTMENT—*concluded.*

See LIMITATION ACT, 1877, SCH. II, ART. 144—ADVERSE POSSESSION.

[I. L. R., 26 Bom., 442

See MADRAS RENT RECOVERY ACT, s 10

[I. L. R., 25 Mad., 613

See MORTGAGE—CONSTRUCTION.

[L. R., 30 I. A., 54

EJECTMENT, SUIT FOR.

See BENGAL TENANCY ACT, s 155

[I. L. R., 30 Calc., 1063

See COMPROMISE—

CONSTRUCTION, ETC, OF DEEDS OF COMPROMISE; 7 C. W. N., 158

COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[7 C. W. N., 90

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—NORTH-WESTERN PROVINCES . I. L. R., 23 All., 360

See LANDLORD AND TENANT—

NATURE OF TENANCY;

[I. L. R., 28 Calc, 738

TRANSFER BY TENANT;

[6 C. W. N., 916

FORFEITURE—DENIAL OF TITLE;

[I. L. R., 28 Calc., 135
6 C. W. N., 575

EJECTMENT.

See ONUS OF PROOF—LANDLORD AND TENANT . . 7 C. W. N., 734

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS

[I. L. R., 30 Calc., 339

——notice—

See RULES MADE UNDER ACTS—BENGAL TENANCY ACT.

[I. L. R., 28 Calc., 590

1.—*Law of Oudh—Re-grant—Construction—Ambiguity—"Occupants"*—In a suit to eject the [illegible]

of Oudh, it appeared that, on a claim thereto made by the plaintiff, the Government had directed that the *bazar* be expunged from the *Nazul* Register, and that the status of its "occupants," who were described as having all along exercised proprietary [illegible] *Held* that [illegible]

Government was to re-grant to the persons who, but for the confiscation, would now be entitled. Until the re-grant, the property was that of

EJECTMENT, SUIT FOR—*concluded.*

the Government, and the defendants could not acquire title by limitation until twelve years thereafter. Case remanded to try (1) whether the plaintiffs would have been entitled but for the confiscation; and (2) whether the occupiers had acquired any rights by long possession. CHOUDHRI MAKBUL HUSAIN *v* LALTA PERSHAD (1901)

[L. R., 28 I. A., 169 : s.c. I. L. R., 24 All., 1

2.—*Cause of action—Compensation—Transfer of Property Act (IV of 1882), s. 51—Estoppel—Evidence Act (I of 1872), s. 115.*—*A* brought a suit against *B* and others for ejectment, making the landlord a defendant to the suit, on the allegation

defendants (second party) mainly was that the suit was bad for multifariousness, inasmuch as they were severally in possession of definite and distinct portions of the land under different demises by the first defendant, and that there was no community of interest; that they, having taken leases from the first defendant in good faith and entered into possession of the land thereunder, spent a considerable amount of money in clearing jungles and making embankments, etc, and that, if the plaintiff be entitled to succeed at all, he could not obtain possession without paying them compensation. *Held* that the suit was not bad for misjoinder of causes of action The cause of action of a plaintiff suing in ejectment cannot be affected by the title under which the defendants profess to hold possession, for what concerns the plaintiff is that another is wrongfully in possession of what belongs to him; and that fact gives him his cause of action, and it is a matter of indifference to him on what ground different persons in possession may seek to justify the wrongful detention of what is his What the plaintiff is entitled to claim is the recovery of possession of his

Hazra v. Rameswar Mondol (1897), I L R, 24 Calc, 831, referred to *Held also* that, as it was

proceed with these expenditures, the plaintiff was

possession against the defendants. NUNDO KUMAR NASKER *v* BANOMALI GAYAN (1902)

[I. L. R., 29 Calc, 871

EMBANKMENT.

1.—**Addition to embankment**—*" Shall add to"—Bengal Embankment Act (Ben. Act II of 1882), ss. 76, cl. (a), 79* —The words "shall add to any existing embankments," in s 76, cl (*a*), of Bengal Act II of 1882, include an addition to the height of an embankment. *Goverdhan Sinha v. The Queen-Empress (1885), I. L R, 11 Calc., 570,* overruled. AJODHYA NATH KOILA *v.* RAJ KRISHTO BHAR (F.B., 1902)

[I. L. R., 30 Calc., 481 : s.c. 7 C. W. N., 284

2.—**Notification**—*Bengal Embankment Act (Ben. Act II of 1882), ss. 6, 76 (b), 80—Publication of notification in Gazette, effect of—*

effect within a declared area one month after the notification mentioned in s 6 appears in the Gazette. The further direction in s 6 as to the publication of the notification in the manner provided by s 80, as

override the declaration in s 6 that the provisions of the notification shall take effect one month from the

3.—**Sand bank**—*Bengal Embankment Act (Ben Act II of 1882), ss. 3, 77—" Public embankment," meaning of—" Made or erected"—Sand bank formed naturally between two spurs*

ficially formed, by the action of the water between two spurs erected by Government for the protection of an embankment, is not an embankment within the definition of that expression, nor is it a public embankment. The cutting through of such a sand bank for the protection of one's own cultivation by

EMBANKMENT—*concluded.*

construe strictly expressions occurring therein. BISSUMBHUR SINGH *v.* QUEEN-EMPRESS (1900) [5 C. W. N., 108

ENCROACHMENT.

See LAND REVENUE [I. L. R., 25 Bom., 752

—— on public way—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . . 6 C. W. N., 886

ENDORSEMENT.

See HUNDI—ENDORSEMENT

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES

—— of warrant of arrest—

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 C. W. N., 447

ENDOWMENT.

See ACT—1863—XX (RELIGIOUS ENDOWMENTS)

See DECLARATORY DECREE, SUIT FOR—ENDOWMENT

See HINDU LAW—ENDOWMENT

See LIMITATION ACT, 1877, SCH II—

ART 134; [I. L. R., 27 Bom., 363, 500

ARTS 134 AND 144 [I. L. R., 27 Bom., 373

See MAHOMEDAN LAW—ENDOWMENT

See MALABAR LAW—ENDOWMENT

See REFERENCE TO HIGH COURT—CIVIL CASES . I. L. R., 25 Bom., 327

—*Hindu Law—Mirasi rights attached to Devastanams—Suit against office-holder—Compromise consenting to sale of office and its emoluments* [illegible]

sued by a person to whom he had mortgaged his right to the office, together with other property, and a compromise was arrived at, by the terms of which the office-holder agreed that his right to the office and to its emoluments should be sold in satisfaction of the mortgage-debt. A decree was passed in terms of the compromise, and the decree-holder sought to

ENDOWMENT—*concluded.*

have the right to the office sold in execution of that decree, and contended (on objection being raised) that, inasmuch as a decree had been passed directing the sale of the office, the Court executing the decree was not at liberty to consider its validity, but must execute it according to its terms *Held* that, as the decree was based on an agreement of compromise, and the Court had merely adopted the contract, the Court must be taken to have adopted it with all its incidents By s 375 of the Code of Civil Procedure, the Court had no jurisdiction to pass a decree on a compromise unless it was a lawful compromise [illegible]

will not be enforced *Nagappa v. Vencata Rav, I L. R., 24 Mad, 265,* referred to LAKSHMANASWAMI NAIDU *v* RANGAMMA (1902) [I. L. R, 26 Mad., 31

ENGLISH LAW.

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY [I. L. R, 26 Mad., 540

——application of, in Calcutta—

See SLANDER . I. L. R., 28 Calc., 452

——Order 11 of 1883, Rule 1, sub-s. (e)—

See FOREIGN COURT, JUDGMENT OF [I. L. R., 28 Calc., 641

—*By-law held to be unreasonable, and its enforcement refused*—The English law as to the necessity of by-laws being reasonable is applicable to by-laws framed in the exercise of their statutory powers by Municipal Boards in India. EMPEROR *v* BAL KISHAN (1902) I. L. R., 24 All., 439

ENHANCEMENT OF RENT

See BENGAL TENANCY ACT, s. 29

See MADRAS RENT RECOVERY ACT, s. 11. [I. L. R., 26 Mad., 456

See RENT, SUIT FOR . 5 C. W. N., 880

——by arbitration—

See BENGAL TENANCY ACT, s 30. [6 C. W. N., 614

——lands held in excess of tenure—

See BENGAL TENANCY ACT, s 52. [8 C. W. N., 318

——onus of proof—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS . I. L. R., 30 Calc., 1033

ENQUIRY.

See INQUIRY.

ENTICING AWAY MARRIED WOMAN.

See ADULTERY I. L. R., 30 Calc., 910
[7 C. W. N., 143

EPIDEMIC DISEASES ACT (III OF 1897).

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY, OR OTHERWISE.
[I. L. R., 34 Mad., 70

EQUITY OF REDEMPTION.

See MORTGAGE.

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

See TRANSFER OF PROPERTY ACT, s. 93.
[I. L. R., 30 Calc., 463

ERROR.

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD

——affecting merits of case—

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

See WITNESS—CIVIL CASES.
[I. L. R., 28 Calc., 37

——in law—

See APPEAL—ARBITRATION.
[I. L. R., 29 Calc., 167

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW AND PROCEDURE.

—*Accused—Offence triable as a warrant case—Conviction of offence triable as a summons case—Absence of charge—Conviction, legality of—Material error—Criminal Procedure Code (Act V of 1898), ss. 232, 242 and 254—Penal Code (Act XLV of 1860), ss 143 and 379.*—When a case is being tried as a warrant case, and a charge is drawn up of an offence which is triable as a warrant case, and it is intended to proceed against the accused also for an offence which is triable only as a summons case, that offence should form part of the charge. Where an accused person was summoned for offences under ss. 143 and 379 of the Penal Code, and the trying Magistrate drew up a charge only for the offence under s. 379, but convicted the accused only for the offence under s 143 of the Code: *Held* that the offence under s. 143 should have formed part of the charge, and that the accused was misled in his defence by the absence of such a charge. HOSSEIN SARDAR *v.* KALU SARDAR (1902)
[I. L. R., 29 Calc., 481; s.c., 6 C. W. N., 599

ESCAPE FROM CUSTODY.

1.—Aid of chaukidar—*Power of a police-officer to demand aid of a chaukidar in arresting an accused—Code of Criminal Procedure (Act V of 1898), s. 42 (a)—Lawful arrest Lawful custody.*—A police-officer lawfully authorised to arrest a person can demand the aid of a *chaukidar*, under s 42 (a) of the Code of Criminal Procedure, in preventing the person from escaping by a certain path; and the custody of a person so taken by the *chaukidar* is, for the time being, lawful custody. MANIK PAN *v.* KENARAM SIRDAR (1901)
[6 C. W. N., 337

2.—Arrest by private person—*Act XLV of 1860 (Indian Penal Code), ss 224, 411—Escape from lawful custody—Actual thief arrested by private person whilst in possession of stolen property—S 411 of the Indian Penal Code not applicable to the thief himself*—S. 411 of the Indian Penal Code does not apply to the person who is the actual thief. Where therefore a person

meaning of s. 224 of the Code *Semble* that, if the owner of the bullock had himself been entitled to make the arrest, the subsequent custody of the prisoner by the *chaukidar* would have been a lawful custody. *Queen-Empress* v. *Potadu (1888), I. L. R., 11 Mad., 480,* referred to KING-EMPEROR *v.* JOHRI (1901) . . . . I. L. R., 23 All., 266

3.—Offence—*Arrest—Cognizable offence—Escape from lawful custody—"For any such offence," meaning of—Code of Criminal Procedure (Act V of 1898), s. 54—Penal Code (Act XLV of 1860), ss. 144 and 224.*—The words, in s. 224 of the Penal Code, "for any such offence" mean for any offence with which a person is charged or for which he has been convicted. So that it would be an offence for a man to escape from custody after he had been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence. An accused person is no less guilty than a convicted person, if he escapes from lawful custody. In the present case the petitioners were arrested by the police under the authority of s 54 of the Code of Criminal Procedure. That arrest was perfectly lawful, and the subsequent detention was in lawful custody. *Ganga Charan Singh* v *Queen-Empress (1893), I. L. R, 21 Calc., 337,* distinguished. DEO SAHAY LAL *v.* QUEEN-EMPRESS (1900)
[I. L. R., 28 Calc., 253; s.c., 5 C. W. N., 289

ESCHEAT.

—As to whether natural relationship to an adopted son would be efficacious to intercept an escheat to the Crown, *quære.* MUTHAYYA RAJAGOPALA THEVAR *v.* MINAKSHI SUNDARA NACHIAR (1901)
[I. L. R., 25 Mad., 394

ESTATES PARTITION ACT (BEN. ACT VIII OF 1876).

——ss. 116, 149, 150—

See LIMITATION ACT, 1877, SCH. II, ART. 14 . . I. L. R., 29 Calc., 367

ESTOPPEL.

See AGREEMENT. I. L. R., 29 Calc., 306

See BANKER AND CUSTOMER. [I. L. R., 25 Bom., 499

See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES [I. L. R., 26 Bom., 54

See COMPROMISE—CONSTRUCTION, ETC., OF DEEDS OF COMPROMISE [7 C. W. N., 158

See EJECTMENT, SUIT FOR [I. L. R., 29 Calc., 871

See LANDLORD AND TENANT—

NATURE OF TENANCY; [I. L. R., 27 Bom., 515

TRANSFER BY TENANT; [6 C. W. N., 916

FORFEITURE—DENIAL OF TITLE [6 C. W. N., 575
7 C. W. N., 596

See LAND REVENUE [I. L. R., 26 Bom., 271

See RES JUDICATA—ESTOPPEL BY JUDGMENT

——by conduct—

See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES. [I. L. R., 26 Mad., 79

See EXECUTION OF DECREE—MODE OF EXECUTION—INSTALMENTS. [I. L. R., 24 All., 85

See LAND-REVENUE. [I. L. R., 25 Bom., 714, 752

——by misrepresentation —

See LEASE—CONSTRUCTION [I. L. R., 30 Calc., 883

1. ESTOPPEL BY JUDGMENT.

1.—Competent Court—*Res judicata—Civil Procedure Code (Act XIV of 1882), s 13—Court of competent jurisdiction—Whether a decision of a previous suit for compensation was one of a Court of competent jurisdiction to bar a subsequent*

ESTOPPEL—*continued.*

1. ESTOPPEL BY JUDGMENT—*continued.*

claim for compensation in a suit for arrears of rent as well as for compensation—Mixed question of law and fact.—A suit for compensation was brought in the Court of the Munsif at Goas in 1868 by the plaintiff (*patnidar*) against the defendant's predecessors (*darpatnidars*), upon the basis of a *darpatni kabuliyat*, which stipulated that the *darpatnidars* would deliver certain articles to the plaintiff's landlord, or in default they would compensate the plaintiff for any damage she might sustain The Court (which had no jurisdiction to try suits for rent) gave a decree to the plaintiff for damages which she had sustained for the *darpatnidars'* default. In a subsequent suit brought by the same plaintiff

for compensation for breach of contract, and, as the previous suit was not a suit for arrears of rent, nor was the claim in the subsequent suit, so far as it related to the amount of compensation under the stipulation, a claim for arrears of rent, so the deci-

the question being a mixed question of law and fact. A decision in a previous suit on a question of law, even if erroneous, would operate as *res judicata* in a subsequent suit. *Parthasaradi Ayyangar* v. *Chinna Krishna Ayyangar (1882), I. L. R., 5 Mad., 304,* dissented from BISHNU PRIYA CHOWDHURANI *v.* BHABA SUNDARI DEBYA (1901) [I. L. R., 28 Calc., 318

2.—Decree—*Whether a decree estops a person not a party to it—Evidence*—Certain property conveyed by one Abdul Ali to his wife was purchased by one *G* at a sale held in execution of a mortgage

wife was a fictitious transaction, and a decree was made in *G*'s favour. In a subsequent suit between *G* and one *B*, who was no party to the previous suit. *Held* that *B* was not estopped by that decree from disputing *G*'s title to the property. BROJENDRA KUMAR ROY CHOWDRY *v.* GOPI MOHAN ROY (1903) 7 C. W. N., 574

3.—Representative of deceased plaintiff—*Civil Procedure Code, ss 401 et seq—Suit in formâ pauperis—Death of plaintiff—Decree passed in ignorance of plaintiff's death—Appeal—Consent*

ENQUIRY.

See INQUIRY.

ENTICING AWAY MARRIED WOMAN.

See ADULTERY I. L. R., 30 Calc., 910
[7 C. W. N., 143

EPIDEMIC DISEASES ACT (III OF 1897).

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY, OR OTHERWISE
[I. L. R., 24 Mad., 70

EQUITY OF REDEMPTION.

See MORTGAGE.

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

See TRANSFER OF PROPERTY ACT, s. 90.
[I. L. R., 30 Calc., 463

ERROR.

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD.

——affecting merits of case—

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

See WITNESS—CIVIL CASES.
[I. L. R., 28 Calc., 37

——in law—

See APPEAL—ARBITRATION
[I. L. R., 29 Calc., 167

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW AND PROCEDURE

—*Accused—Offence triable as a warrant case—Conviction of offence triable as a summons case—Absence of charge—Conviction, legality of—Material error—Criminal Procedure Code (Act V of 1898), ss. 232, 242 and 254—Penal Code (Act XLV of 1860), ss 143 and 379.*—When a case is being tried as a warrant case, and a charge is drawn up of an offence which is triable as a warrant case, and it is intended to proceed against the accused also for an offence ...

... trying Magistrate drew up a charge only for the offence under s. 379, but convicted the accused only for the offence under s 143 of the Code: *Held* that the offence under s 143 should have formed part of the charge, and that the accused was misled in his defence by the absence of such a charge. HOSSEIN SARDAR *v.* KALU SARDAR (1902)
[I. L. R., 29 Calc., 481; s.c., 6 C. W. N., 598

ESCAPE FROM CUSTODY.

1.—Aid of chaukidar—*Power of a police-officer to demand aid of a chaukidar in arresting an accused—Code of Criminal Procedure (Act V of 1898), s 42 (a)—Lawful arrest Lawful custody.*—A police-officer lawfully authorised to arrest a person can demand the aid of a *chaukidar*, under s. 42 (*a*) of the Code of Criminal Procedure, in preventing the person from escaping by a certain path; and the custody of a person so taken by the *chaukidar* is, for the time being, lawful custody. MANIK PAN *v.* KENARAM SIRDAR (1901)
[6 C. W. N., 337

2.—Arrest by private person—*Act XLV of* ... *fro* ... *pre* ... *pro* ... *ap* ... Indian Penal Code does not apply to the person who is the actual thief. Where, therefore, a person whose bullock had been stolen in his absence traced it to the house of the thief, and there and then arrested him, and made him over to a *chaukidar*, from whose custody he escaped, it was *held* that this was not an escape from lawful custody, within the meaning of s. 224 of the Code *Semble* that, if the owner of the bullock had himself been entitled to make the arrest, the subsequent ...

3.—Offence—*Arrest—Cognizable offence—Escape from lawful custody—"For any such offence," meaning of—Code of Criminal Procedure (Act V of 1898), s. 54—Penal Code (Act XLV of 1860), ss 144 and 224*—The words, in s. 224 of the Penal Code, "for any such offence" mean for any offence with which a person is charged or for which he has been convicted. So that it would be an offence for a man to escape from custody after he had been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence An accused person is no less guilty than a convicted person, if he escapes from lawful custody. In the present case the petitioners were arrested by the police under the authority of s 54 of the Code of Criminal Procedure That arrest was perfectly lawful, and the subsequent detention was in lawful custody. *Ganga Charan Singh* v. *Queen-Empress (1893), I. L. R, 21 Calc., 337,* distinguished DEO SAHAY LAL *v* QUEEN-EMPRESS (1900)
[I. L. R., 28 Calc., 253; s.c., 5 C. W. N., 269

ESCHEAT.

—*As to whether natural relationship to an adopted son would be efficacious to intercept an escheat to the Crown, quære.* MUTHAYYA RAJAGOPALA THEVAR *v.* MINAKSHI SUNDARA NACHIAR (1901)
[I. L. R., 25 Mad., 394

EUROPEAN BRITISH SUBJECT—*concluded.*

——in Mysore, jurisdiction over—

See Foreign Jurisdiction Act, 1879, ss. 4, 6 and 8 . I. L. R., 26 Mad., 607

——jurisdiction to commit, to jail—

See Habeas Corpus, Writ of [I. L. R., 29 Calc., 286

EVIDENCE.

See Evidence—Civil Cases.
See Evidence—Criminal Cases.
See Evidence—Parol Evidence.
See Evidence Act (I of 1872).
See False Evidence.
See Onus of Proof.

EVIDENCE—CIVIL CASES.

	Col.
1. Mode of dealing with Evidence .	347
2 Legitimacy	„
3. Account Sales	348
4. Decrees	„
5. Maps	„
6 Miscellaneous Documents—	
Criminal Court, proceedings in	350
Endorsed Promissory Notes .	351
Petitions	„
Road-cess Papers . .	352

See Foreign Court, Judgment of [I. L. R , 28 Calc., 641

See Hindu Law—
Adoption—Evidence of Adoption;
Inheritance—Migrating Families;
[I. L. R., 29 Calc., 433
Partition—Requisites for Partition
[I. L. R., 30 Calc., 738

See Landlord and Tenant—Nature of Tenancy . . 7 C. W. N., 734

See Possession—Evidence of Possession.

See Res judicata—Estoppel by Judgment . . I. L. R., 28 Calc., 109

See Witness—Civil Cases—Consideration and Weight of Evidence.

EVIDENCE—CIVIL CASES—*continued.*

——accounts and account books—

See Promissory Notes—Assignment of, and Suits on, Promissory Notes. [I. L. R., 29 Calc., 334

——acknowledgment—

See Limitation Act, 1877, Sch. II, Art. 64 . . I. L. R., 23 All., 502

——admissibility of—

See Appellate Court—
Evidence and Additional Evidence on Appeal, [6 C. W. N., 31
Objections taken for first time on Appeal—Special Cases. [I. L. R., 28 Calc., 142

See Commission—Civil Cases [7 C. W. N., 806

See Compromise—Construction, Enforcing, Effect of, and setting aside, Deeds of Compromise. [I. L. R., 25 All., 546

See Conspiracy. [I. L. R., 30 Calc., 833

See Contract—Alteration of Contracts—Alteration by Party. [I. L. R., 25 All., 580

See Divorce Act, s. 35. [I. L. R., 28 Calc., 221

See Evidence—Parol Evidence.

See Evidence Act, s 32 [I. L. R., 25 All., 143

See Hindu Law—Marriage—Evidence as to, and Proof of, Marriage. [I. L. R., 27 Bom., 485

See Interest—Miscellaneous Cases—Bill of Exchange [I. L. R., 30 Calc., 446

See Lease—Construction [I. L. R., 30 Calc., 883

See Mahomedan Law—Inheritance. [I. L. R., 23 All., 20

See Registration Act (III of 1877)—
s. 17, . I. L. R., 30 Calc., 783
s. 17, cls. (b) and (d) [I. L. R., 30 Calc., 1016

——decrees, judgments and proceedings in former suits; decrees and proceedings not inter partes—

See Hindu Law—Custom—Primogeniture . . I. L. R., 29 Calc., 343

——discovery of fresh evidence—

See Appellate Court—Evidence and Additional Evidence in Appeal.

ESTOPPEL—*continued.*

1. ESTOPPEL BY JUDGMENT—*concluded.*

order for re-trial - Objection to plaintiff's represen-
in a
ignor-
n her
ndent
legal

[I. L. R., 25 All., 137

2 ESTOPPEL BY CONDUCT.

4.—Legacy—*Legacy in satisfaction of indebtedness.*—It was contended that plaintiff was estopped from claiming a legacy under the will, as he had disputed the validity of the latter, and had elected to take the R10,000 as a debt due to himself and no
brother hac
as family
him and had also claimed a share *Held* that there was no estoppel, and that plaintiff's right to the legacy was not affected by that claim RAJAMANNAR *v.* VENKATAKRISHNAYYA (1902)
[I. L. R., 25 Mad., 361

5.—Minor—*Suit by minor.*—A minor, who,

s.c. 6 C. W. N., 132

by
of
to
1872), ss. 11, 19, 64, 65—Mortgage by minor—Persons competent to contract—Void contract—Advances on mortgage declared invalid, re-payment of.—S. 115 of the Evidence Act (I of 1872) does not apply to a case where the statement relied

fraud as to take away the privilege of infancy. *Nelson* v *Stocker (1859), 4 De. G. and J., 458,* followed On the true construction of the Contract Act (IX of 1872), a person who, by reason of infancy, is incompetent to contract, cannot make a contract

ESTOPPEL—*concluded.*

2. ESTOPPEL BY CONDUCT—*concluded.*

within the meaning of the Act. A mortgage, therefore, made by a minor is void; and a money-lender who has advanced money to a minor on the security of the mortgage is not entitled to re-payment of the money on a decree being made declaring the mortgage invalid; ss 64 and 65 of the Contract Act being based on there being a contract between competent parties, and being inapplicable to a case

7.—Mortgage—*Evidence Act (I of 1872), ss. 115, 116.*—Certain property was mortgaged in 1884. In 1889, the appellant took from the mortgagors and another person a lease of certain lands which

mortgagors were not entitled to the whole of the mortgaged property at the time the mortgage was executed in 1884, *i.e.*, five years before the lease was taken by the appellant. PROSUNNO KUMAR SEN *v.* MAHABHARAT SAHA (1903) 7 C. W. N., 575

8.—Sale—*Equitable estoppel—Compromise petition—How far a party is entitled to contest the*

referred to. UTTAM CHANDRA KEITHY *v.* KHETRA NATH CHATTOPADHYA (1901)
[I. L. R., 29 Calc., 577

EUROPEAN BRITISH SUBJECT.

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS

EUROPEAN BRITISH SUBJECT—*concluded.*

——in Mysore, jurisdiction over—

See FOREIGN JURISDICTION ACT, 1879, ss. 4, 6 AND 8 . I. L. R., 26 Mad., 607

——jurisdiction to commit, to jail—

See HABEAS CORPUS, WRIT OF [I. L. R., 29 Calc., 286

EVIDENCE.

See EVIDENCE—CIVIL CASES.
See EVIDENCE—CRIMINAL CASES.
See EVIDENCE—PAROL EVIDENCE.
See EVIDENCE ACT (I OF 1872).
See FALSE EVIDENCE.
See ONUS OF PROOF

EVIDENCE—CIVIL CASES.

See FOREIGN COURT, JUDGMENT OF [I. L. R., 28 Calc., 641

See HINDU LAW—
ADOPTION—EVIDENCE OF ADOPTION;
INHERITANCE—MIGRATING FAMILIES,
[I. L. R., 29 Calc., 433
PARTITION—REQUISITES FOR PARTITION
[I. L. R., 30 Calc., 738

See LANDLORD AND TENANT—NATURE OF TENANCY . . 7 C. W. N., 734

See POSSESSION—EVIDENCE OF POSSESSION.

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 28 Calc., 109

See WITNESS—CIVIL CASES—CONSIDERATION AND WEIGHT OF EVIDENCE.

EVIDENCE—CIVIL CASES—*continued.*

——accounts and account books—

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.
[I. L. R., 29 Calc., 334

——acknowledgment—

See LIMITATION ACT, 1877, SCH. II, ART. 64 . . I. L. R., 23 All., 502

——admissibility of—

See APPELLATE COURT—
EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL;
[6 C. W. N., 31
OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES.
[I. L. R., 28 Calc., 142

See COMMISSION—CIVIL CASES
[7 C. W. N., 806

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.
[I. L. R., 25 All., 546

See CONSPIRACY.
[I. L. R., 30 Calc., 933

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.
[I. L. R., 25 All., 580

See DIVORCE ACT, s. 35
[I. L. R., 28 Calc., 221

See EVIDENCE—PAROL EVIDENCE.

See EVIDENCE ACT, s 32
[I L. R., 25 All., 143

See HINDU LAW—MARRIAGE—EVIDENCE AS TO, AND PROOF OF, MARRIAGE.
[I. L. R., 27 Bom., 485

See INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE
[I. L. R., 30 Calc., 446

See LEASE—CONSTRUCTION
[I. L. R., 30 Calc., 883

See MAHOMEDAN LAW—INHERITANCE.
[I. L. R., 23 All., 20

See REGISTRATION ACT (III OF 1877)—
s 17, . I. L. R., 30 Calc., 783
s. 17, CLS. (*b*) AND (*h*)
[I. L. R., 30 Calc., 1016

——decrees, judgments and proceedings in former suits; decrees and proceedings not inter partes—

See HINDU LAW—CUSTOM—PRIMOGENITURE . . I. L. R., 29 Calc., 343

——discovery of fresh evidence—

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE IN APPEAL

EVIDENCE—CIVIL CASES—*continued.*

6. MISCELLANEOUS DOCUMENTS—*continued.*

sion of disputed land, of which the defendant had been, by an order under s. 145 of the Criminal Procedure Code (Act X of 1882), made in 1888, declared to be in possession: *Held* that the *onus* was on the plaintiff to prove her title to the land. Where, however, she had done so, and had obtained a decree in her favour, the *onus* is on the defendant (who [illegible] decision of the [illegible]

[illegible]

as an *Amin* in preparing it with another *Amin*, who was dead; the witness had little or no knowledge of surveying, but the *Amin* with whom it was prepared was a skilled surveyor; and the Collector, who was also dead, had tested the accuracy of the [illegible]

[illegible]

s.c., 6 C. W. N., 386; L. R., 29 I. A., 24

10.—Endorsed promissory notes—*Negotiable Instruments Act (XXVI of 1881), s. 51—Promissory note in favour of two payees—Endorsement by one in favour of the other—Suit by endorsee as such—Maintainability—Suit by endorsee as assignee of chose in action—Endorsement evidence of assignment*—Where a promissory note has been made in favour of two payees, one of whom endorses it to the other, the endorsee cannot sue on the note as endorsee or as one of two joint payees. He may, however, maintain a suit, in respect of the amount due under the note, as assignee of the chose in action. Although such an endorsement cannot operate as an endorsement under the law merchant, it may be relied on as evidence of an assignment by way of release in favour of the endorsee. Rule 428 of the Rules of Procedure of the Presidency Small Cause Court is not *ultra vires*. MUHAMMAD KHUMARALI *v.* RANGA RAO (1901) . . . I. L. R., 24 Mad., 654

[illegible]

by a pleader acting on a *vakalatnama* signed by one who represented himself to be the attorney of that person, is *primâ facie* evidence that it proceeds from him, and is, as such, admissible in evidence in

EVIDENCE—CIVIL CASES—*concluded.*

6. MISCELLANEOUS DOCUMENTS—*concluded.*

a subsequent suit. *Soorendra Nath Roy* v. *Musst Heeramonee Burmoneah (1868), 12 M. I. A., 81; Bhagain Megh Ranee Koer* v. *Gooroo Pershad Singh (1876), 25 W. R., 68*, followed. LALITA SUNDARI *v.* SURNOMOYEE DASI (1900) [5 C. W. N., 353

12.—Road-cess papers—*Road-cess Returns—Returns made under s. 95, Bengal Cess Act (Ben Act IX of 1880)—Admissibility in evidence—Grounds of enhancement of rent—"Fair and equitable rates"—Presumption against person not producing evidence which he can produce—Evidence Act (I of 1872), s. 114 (g).*—In a suit for enhancement of the rent of a talukdari tenure, road-cess returns rendered under s. 95 of the Bengal Cess Act (Ben. Act IX of 1880), though not conclusive, were held to be admissible in evidence as a basis on which to ascertain the assets of the taluk, and so fix a fair and equitable limit of enhancement. When such returns, produced by the plaintiff, showed that the talukdars were receiving from their sub-tenants a considerably higher rent relatively than that which they were paying to their superior landlords, and that the claim for enhancement could *primâ facie* be supported on [illegible]

[illegible]

BHADURI (1903) [I. L. R., 30 Calc., 1033; s c. L. R., 30 I. A., 177

EVIDENCE—CRIMINAL CASES.

See ACCOMPLICE.

See APPROVERS.

See CHARGE TO JURY—MISDIRECTION.
[I. L. R., 29 Calc., 783

EVIDENCE—CRIMINAL CASES—*continued.*

See CONFESSION.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—EVIDENCE, MODE OF TAKING, ETC.

See SECURITY FOR GOOD BEHAVIOUR.
[5 C. W. N., 249
I. L. R., 29 Calc., 779

See WITNESS—CRIMINAL CASES.

—— absence of—

See EASEMENT . I. L. R., 30 Calc., 918

——consideration of, and mode of dealing with, evidence—

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS
[I. L. R., 29 Calc., 128

—— examination of accused—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS
[I. L. R., 28 Calc., 689

—— hearsay evidence—

See CRIMINAL PROCEDURE CODE, s 436
[5 C. W. N., 574

—— statements to police officers—

See DEFAMATION.
[I. L. R., 28 Calc., 794

1. CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE

1.—*Murder—Incomplete evidence—New trial—Further evidence—Admissibility of evidence—*

take further evidence before judgment could properly be pronounced against the accused. Where, upon information received from the *chaukidar* of the offence (and which information was duly recorded in the station diary), the Sub-Inspector had gone to the Hospital to see the wounded man and had there recorded the statement made by him: *Held* that this record of such statement could in no sense be regarded as a first information of the offence, within the meaning of s. 154 of the Code of Criminal Procedure. *Held, further,* that the writing containing the statement so recorded by the Sub-Inspector and attested by witnesses could not be regarded as evidence. In order to make it evidence, the course indicated in the case of *Empress v Samiruddin (1881), I L. R, 8 Calc, 211,* should have been followed. KING-EMPEROR *v.* DAULAT KUNJRA (1902) . . . 6 C. W. N., 921

EVIDENCE—CRIMINAL CASES—*continued.*

2. CHARACTER.

2.—*Criminal Procedure Code, ss. 107, 117—Security for keeping the peace—Evidence of general repute not available in such cases.*—It is only in the case of a person who is an habitual offender, and is called upon to furnish security for good behaviour, that the fact of his being an habitual offender may be proved by evidence of general repute Where a person is called upon to furnish security to keep the peace, evidence of ... show that ... of the ... do any ... a breach ... quillity. EMPEROR *v.* BIDHYAPATI (1903)
[I. L. R., 25 All., 273

3 DEPOSITIONS.

3.—*Evidence Act, s 33—Deposition of a deceased* ...

s 33 of the Evidence Act (I of 1872). QUEEN-EMPRESS *v.* BASVANTA (1900)
[I. L. R., 25 Bom., 168

4.—*Criminal Procedure Code (Act V of 1898), s 288—Statement of witness before committing Magistrate treated as evidence at a trial before Court of Session—Evidence duly taken*—Under ...

case, at the trial where, for the purposes of justice, the adoption of such a course is found necessary by the Judge. QUEEN-EMPRESS *v* DORASAMI AYYAR (1901) . . . I. L. R., 24 Mad., 414

4. DYING DECLARATIONS

5.—*Indian Penal Code (Act XLV of 1860), s 396.*—Appellant was convicted and sentenced to transportation for life on a charge of dacoity. The most material evidence for the prosecution was ...

Surgeon, who made the *post-mortem* examination on the deceased, was not called, being on leave; but the Civil Surgeon, on a perusal of the notes left by the

EVIDENCE—CRIMINAL CASES—*continued.*

4. DYING DECLARATIONS—*concluded.*

Assistant Surgeon, gave evidence that the cause of the death of the deceased was pneumonia aggravated by a stab. In the notes themselves no cause of death was given, and there was no evidence as to how the pneumonia was aggravated. No explanation was given as to how the opinion was formed that the pneumonia was aggravated by the injury, and there

Held that

ave been

ence to

by the

wounds received at the dacoity, or that the dacoity was the transaction which resulted in his death. IMPERATRIX *v.* RUDRA (1900)

[I. L. R., 25 Bom., 45

6.—*Proof of record of declaration—Language in which declaration is made—Admissibility in evidence.—Evidence Act, 1872, s. 32 (1)*—A declaration, made by a person in expectation of death, recorded in the absence of the accused and in a language different from the one in which it is made, by an officer who is not examined in the case, cannot properly be used in evidence against the accused; and at any rate such a declaration should not be

Act; and that statement is not the document made

atement made

y of proving a

some witness

at liberty to

he note made

bout the time

the statement is made. When such a declaration is not a continuous statement made by the dying person, but is elicited in answer to one or more questions, the document, to be really of use, should clearly set out the exact questions put and the answers made to them. KING-EMPEROR *v.* MATHURA THAKUR (1901) . . . . . 6 C. W. N., 72

5. MEDICAL EVIDENCE.

7.—*Post mortem report.*—A post mortem report cannot be used as evidence at the Sessions trial, except by way of refreshing the memory of the person who made it, or to contradict him. RAM SARUP RAI *v.* EMPEROR (1901) . . . 6 C. W. N., 98

6. POLICE EVIDENCE, DIARIES, PAPERS AND REPORTS.

8.—*Written statement recorded by police-officer during police investigation—Admissibility in*

EVIDENCE—CRIMINAL CASES—*continued.*

6. POLICE EVIDENCE, DIARIES, PAPERS AND REPORTS—*concluded.*

of a written statement recorded by a police-officer, as evidence, to the matter of the charge which is actually under investigation by the police-officer when the statement is made. The prohibition extends

under that section. It is very irregular, in a charge of intentionally giving false evidence, to put the

7. PREVIOUS CONVICTIONS.

conviction, as is required by s. 91 of the Evidence Act or s. 511 of the Code of Criminal Procedure.

8. STOLEN PROPERTY.

10.—*Act XLV of 1860 (Indian Penal Code), s. 380—Theft from a railway van—Property found in an adjoining van, in which four railway coolies*

EVIDENCE—CRIMINAL CASES—*concluded.*

8. STOLEN PROPERTY—*concluded.*

connect one or more of them individually with the possession of the cloth. King-Emperor v. Ali Husain (1901) . . **I. L. R., 23 All., 306**

EVIDENCE—PAROL EVIDENCE.

See Limitation Act, 1877, s 19—Acknowledgment of Debts [**I. L. R., 25 Mad., 220**

1. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES.

1.—*Evidence Act (I of 1872), s. 92—Evidence*

kabuliyat was never intended to be acted upon or enforced, or that there was a waiver of some of its

2. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

2.—**Evidence to vary deed**—*Evidence Act (I of 1872), s 92—Evidence to show that a 'deed of sale' was meant to be a 'deed of gift'*—

and Lala Himmat Sahai v. Llewhellen (1885), *I. L. R., 11 Calc.*, 486, distinguished. Rahiman v. Elahi Baksh (1900) . **I. L. R., 28 Calc., 70**

3.————*Evidence Act (I of 1872), s. 92—Conduct of parties—Oral evidence when admissible to prove that a conveyance is a mortgage by way of conditional sale—Admissibility of parol evidence to vary a written contract*—Under

EVIDENCE—PAROL EVIDENCE—*continued.*

2. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

4.————*Evidence Act (I of 1872), s 92—Acts and conduct of parties—Oral*

duct of parties, such as evidence of promise by the

5. ————*Registered kabuliyat, proof of—Contemporaneous oral agreement*

not amount to such an agreement or release of a portion of the rent as to have a binding effect. Radha Raman Chowdry v Bhowani Prosad Bhowmik (1901) . . . . . **6 C. W. N., 60**

6.————*Limitation Act (XV of 1877), s. 19, paragraph 2—Written acknowledgment—Date—Alteration.*—Where a written acknowledgment bears a date which has been altered, oral evidence to prove the date is

7.————*Evidence Act (I of 1872), s. 92—Evidence to vary written instrument—Execution of sale-deed—Subsequent redemption suit on footing that the sale was in fact a mortgage—Evidence of subsequent conduct to show collateral agreement—Inadmissibility*—On the

EVIDENCE—PAROL EVIDENCE—*continued.*

2. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

[illegible]

ment was not registered. On the 29th September, 1876, plaintiff executed a deed of sale of the land in defendant's favour, which was unconditional in its terms, and which was duly registered. Plaintiff subsequently brought a redemption suit against defendant on the deed of 29th September, and he contended that, although that deed was, in its terms, an absolute conveyance, he was entitled to adduce evidence of the subsequent conduct of himself and defendant, to show that the transaction was, in fact, not a sale but a mortgage. *Held* that the evidence was not admissible. *Balkishen Das* v. *Legge (1899), L. R., 27 I. A., 58,* followed. *Khankar Abdur Rahman* v. *Ali Hafez (1900, ante,* col. 358*), I. L. R., 28 Calc., 256,* and *Mahomed Ali Hossein* v. *Nazar Ali (1901, ante,* col. 35-*), I. L. R., 28 Calc., 289,* dissented from. Plaintiff further contended that the contract was not contained in the deed of sale alone, but must be gathered from both of the documents referred to above. *Held* that the document of 23rd September, being unregistered, was inadmissible in evidence, as it purported to create or limit an interest in the immovable property conveyed under the deed of sale. *Pranal Annee* v. *Lakshmi Annee, L. R., 26 I. A., 101,* followed. ACHUTARAMARAJU *v.* SUBBARAJU (1901)

[I. L. R., 25 Mad., 7

8. ———— *Evidence Act (I of 1872), s. 92, proviso 4—Registered document—Subsequent oral agreement—Contract Act (IX of 1872), s. 63—Remission of portion of promise—Discharge in full on receipt of portion of amount due—Evidence of oral agreement.*—In a suit for

[illegible]

at the rate stipulated in the registered lease, the discharge for one of the years was valid under s. 63 of the Contract Act, and took effect. It was immaterial that the discharge had been given in pursuance of the alleged oral agreement, which, though not admissible in evidence, was not illegal. KARAMPALLI UNNI KURUP *v.* THEKKU VITTIL MUTHORAIKUTTY (1902) **I. L. R., 26 Mad., 195**

9.—**Evidence to contradict deed**—*Indian Evidence Act (I of 1872), s. 92—Oral evidence*

EVIDENCE—PAROL EVIDENCE—*concluded.*

2. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*concluded.*

to contradict the recital in a deed.—When one of the parties to a deed is, under any of the provisions of s. 92 of the Evidence Act, permitted to go into oral evidence, it is open to the other party also to rebut that evidence by oral evidence. Where a deed recited the payment of a certain consideration, and the plaintiff denied the passing of any consideration, and adduced evidence in support of his contention under the provisions of s. 92 of the Evidence Act, it is open to the defendants to go into oral evidence to show that there was some consideration for the deed, though not the same as that recited in the deed. *Lala Himmat Sahai Singh* v. *Llewhellen (1885), I. L. R., 11 Calc., 486; Hukum Chand* v. *Hiralal (1876), I. L. R., 3 Bom., 159,* referred to. KAILASH CHANDRA NEOGI *v.* HARISH CHANDRA BISWAS (1900) . . . . . **5 C. W. N., 158**

10.—**Evidence of mere suretyship**—*Act I of 1872 (Indian Evidence Act), s. 92—Construction of document—Evidence of oral agreement not excluded.*—The plaintiff sued to recover money which he had been compelled to pay in virtue of a mortgage executed by his two half-

[illegible]

mortgage-bond as a surety only. SHAMSH-UL-JAHAN BEGAM *v.* AHMAD WALI KHAN (1903)

[I. L. R., 25 All., 337

11.—**Collateral agreement**—*Agreement between lessor and lessee collateral to the lease—Admissibility in evidence—Registration—Evidence Act (I of 1872), s. 92—Registration Act (III of 1877), s. 17—Act IV of 1882, ss. 105, 107.*—An agreement by a lessee to pay for a term of years an annual sum of money to his lessor, forming no part of the terms of his holding, and no charge on the property leased, and being a mere personal obligation collateral to the lease, which, moreover, was to take effect at a future date after the said term of years had run out, is not affected by s. 92 of the Evidence Act, and does not require registration under s. 17 of Act III of 1877, read in conjunction with the Transfer of Property Act, 1882, ss. 105, 107. SUBRAMANIAN CHETTIAR *v.* ARUNACHALAM CHETTIAR (1902)

[I. R., 29 I. A., 138: s.c. I. L. R., 25 Mad., 603; 6 C. W. N., 865

EVIDENCE ACT (I OF 1872).

——**ss. 6, 8**—

See CRIMINAL PROCEDURE CODE, s. 436. **[5 C. W. N., 574**

——**s. 10**—

See CONSPIRACY. **I. L. R., 28 Calc., 797**
" **30 Calc., 983**

EVIDENCE ACT (I OF 1872)—*continued.*

——s. 11—

See CRIMINAL PROCEDURE CODE, s. 436.
[5 C. W. N., 574

See LEASE—CONSTRUCTION.
[I. L. R., 30 Calc., 883

——s. 13—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT, PROCEEDINGS IN I. L. R., 29 Calc., 187

——s. 14—

See CRIMINAL PROCEDURE CODE, s. 436
[5 C. W. N., 574

——s. 24—

See CONFESSION—CONFESSIONS TO MAGISTRATE . I. L. R., 25 Bom., 168, 543
[I. L. R., 26 Mad., 38

——ss. 25, 26—

See CONFESSION—CONFESSIONS TO POLICE OFFICERS.

——s. 30—

See CONFESSION—CONFESSION OF PRISONERS TRIED JOINTLY.

——s. 32 (1)—

See EVIDENCE—CRIMINAL CASES—DYING DECLARATION . . 6 C. W. N., 72

——s. 32 (1)—

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE . 6 C. W. N., 921

——s. 32 (2): account sales—

See EVIDENCE—CIVIL CASES—ACCOUNT SALES . . I. L. R , 28 Calc., 209

——s. 32 (4)—

See TRADE MARK
[I. L. R., 25 Bom., 433

——s. 32 (5), (6)—

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY. L. R., 28 I. A., 1

——s. 32—

1.—*Admissibility in evidence of statement in writing by person who could have been called as a witness, but was not—Statement of deceased persons* —Where a person, although alive at the time the plaintiff closed his case, was not called as a witness, statements in writing by such person, filed before his death, in support of the plaintiff's case, were held by the Judicial Committee to be inadmissible in evidence as statements of a deceased person. A genealogical table purporting to have been made by a person since dead, but which was shown to be merely an exhibit binding on him for the purposes of a former suit, was held to be inadmissible in evidence, having been made without the personal knowledge and belief which must be found or presumed in any admissible statement by a deceased person. JAGATPAL SINGH *v.* JAGESHAR BAKHSH SINGH (1902) . I. L. R., 25 All., 143 :
[s.c. L. R., 30 I. A., 27;
7 C. W. N., 209

EVIDENCE ACT (I OF 1872)—*continued.*

——s. 32—*concluded.*

2.—*Admissibility of evidence—Statements as to heirs, made in accordance with practice of public office—Proof of legitimacy of heirs named in such statements* —A series of statements, extending from 1860 to 1890, by a *wasiqadar*, made in accordance [illegible]

and, under the circumstances, to be conclusive in their favour. BAGAR ALI KHAN *v.* ANJUMAN ARA BEGAM (1903)
[I. L. R., 25 All., 236 :
s.c., L. R., 30 I. A., 94 ; 7 C. W. N., 465

3.—Cl. (5)—*Statement as to age of a member of a family by another member since deceased—Admissibility* —A statement as to plaintiff's age, made by his sister, was admissible in evidence after her decease, under s. 32 (5) of the Evidence Act, the date of birth being the commencement of a relationship by blood, and therefore relating to the existence of such relationship within the meaning of the section. *Ram Chandra Dutt* v. *Jogeswar Narain Das, I. L. R., 20 Calc., 758,* followed. The defendant company's prospectus contained a condition that evidence of age of an assured would be required to be furnished in every case before a claim under a policy would be paid; and recommended assurers to provide [illegible] was required [illegible] y produced. [illegible] was to throw [illegible] the onus of proving the correctness of the age as warranted by the assured ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE COMPANY *v.* NARASIMHA CHARI (1901) . . . I. L. R , 25 Mad., 183

——s. 33—

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS

——s. 34—

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.
[I. L. R., 29 Calc., 334

——s. 35—

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, ETC. I. L. R., 28 Calc., 348

—Even if the word "*sadarad*" had the meaning contended for, and signified that the right of pre-emption no longer existed, it was an entry which it was in excess of the duties prescribed for Settlement Officers in the district in question to make, and therefore no evidential value whatever could be attached to it. *In the matter of Juggun Lall (1880), 7 C. L. R., 356,* and *Queen-Empress* v. *Greesh Chunder Banerjee (1884), I. L. R., 10 Calc., 1024,* referred to. ALI NASIR KHAN *v.* MANIK CHAND (F.B. 1902) . . . I. L. R., 25 All., 90

EVIDENCE ACT (I OF 1872)—*continued.*

——s. 36—

See EVIDENCE—CIVIL CASES—MAPS [7 C. W. N., 849

——s. 42—

See TRADE MARK I. L. R., 25 Bom., 433

——s. 44—

See RIGHT OF SUIT—

DECREES; . 5 C. W. N., 559

FRAUD . 7 C. W. N., 353

—*Res judicata—Evidence—Competence of party, against whom a former judgment is set up as constituting res judicata, to show that such judgment was obtained by fraud or collusion.*—When a subsisting judgment, order or decree, which is relevant under s. 40, 41 or 42 of the Indian Evidence Act, 1872, is set up by one party to a suit as a bar to the claim of the other party, it is not necessary for the party against whom such judgment, order or decree is set up to bring a separate suit to have the same set aside; but it is open to such party, in the same suit in which such judgment, order or decree is sought to be used against him, to show, if such be the case, that the judgment, order or decree relied upon by the other side was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion *Nistarini Dassi* v *Nundo Lall Bose (1899), I. L. R., 26 Calc., 591, Rajib Panda* v *Lakhan Sendh Mahapatra (1899), I. L. R., 27 Calc., 11;* and *Bansi Lal* v *Ramji Lal (1898), I. L. R., 20 All., 370,* referred to BANSI LAL *v.* DHAPO (1902) . . . I. L. R., 24 All., 242

——ss. 63, 64—

See post, s. 90 AND ss. 63, 64 AND 114.

——s. 68—

See DEED—EXECUTION 5 C. W. N., 454

[s.c. I. L. R., 29 Calc., 355

——s. 70—

See DEED—ATTESTATION [7 C. W. N., 384

——s. 80—

See CONFESSION—CONFESSIONS TO MAGISTRATE . . . 7 C. W. N., 230

——s. 90—

1.—*Ancient document, presumption as to—Genuineness of signature in issue—Presumption not excluded, but has to be rebutted.*—It is in the discretion of a Court whether it will raise the presumption in favour of a document for which s. 90 of

EVIDENCE ACT (I OF 1872)—*continued.*

——s. 90—*concluded.*

the Evidence Act provides, but this discretion is not

if an ancient document coming from proper custody is refuted by a Court capriciously or for inadequate reasons When the genuineness of a document purporting to be an ancient document is put in issue,

The presumption merely takes the place of the evidence which would, where a modern document is concerned, be necessary for the purpose of proving due execution, and it must be met and rebutted in the same way as direct evidence of execution in the case of a modern document *Mussamut Phool Bibee* v *Goor Surun Doss (1872), 18 W. R., 485; Boikunt Nath Kundu* v. *Lukhun Majhi (1881),*

2.—*Documents thirty years old—Proper custody—Presumption—Per* BATTY, *J.*—S 90 of the Evidence Act (I of 1872) admits a presumption of the genuineness of documents purporting to be thirty years old, if produced from proper custody proved to have had a legitimate origin 'or' an origin the legitimacy of which the circumstances of the case render probable. It is not necessary that the documents shall be found in the best and most proper place of deposit. The section insists only on a satisfactory account of the origin of the custody, and not on the history of its continuance *Per* ASTON, *J.*—S. 90 of the Evidence Act requires that a document must be produced from the proper custody SHARFUDIN VALAD TAJUDIN *v.* GOVIND BHIKAJI BADE (1902) . . I. L. R., 27 Bom., 452

——s. 90 and ss. 63, 64 and 114—

—*Copy of document—No evidence that original*

earlier date. This earlier document was not pro-

dence that the document, of the contents of which

EVIDENCE ACT (I OF 1872)—*continued.*

—s. 90 and ss. 63, 64 and 114—*concluded.*

the exhibit was evidence, was in fact executed in 1862 between the parties mentioned; and, inasmuch as the exhibit was a copy and not the original, the presumption which, under s. 90 of the Evidence Act, may be made where a document over thirty years old is produced, ought not to be made. *Khetter Chunder Mookerjee* v *Khetter Paul Sreeterutno, I L R, 5 Calc, 856,* referred to APPATHURA PATTAR v GOPALA PANIKKAR (1901) [I. L. R., 25 Mad., 674

—s. 91—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS. [I. L. R., 28 Calc., 689

—s. 92—

See EVIDENCE—PAROL EVIDENCE

—s. 110—

See ONUS OF PROOF—POSSESSION, AND PROOF OF TITLE [I. L. R., 25 Bom., 287

—s. 111—

See ONUS OF PROOF—PRINCIPAL AND AGENT . . I. L. R., 25 All., 358

—s 112—

See EVIDENCE—CIVIL CASES—LEGITIMACY . . I. L. R., 24 All., 445

See ONUS OF PROOF—LEGITIMACY [I. L. R., 25 All., 403

[illegible]

(I of 1872), it is for those who dispute the paternity [illegible] to

the

of

to

and

remained there up to the time of his death, and it was shown that a child, alleged to be that of her husband, was the child of the wife, and that it was born within the time necessary to give rise to the presumption under s. 112, the Judicial Committee, in the absence of any evidence to show that the

wife

held

it the

given

sband

must

llness

s was

but

[illegible] ill;

s c. 6 C. W. N., 146;

L. R., 29 I. A., 17

EVIDENCE ACT (I OF 1872)—*continued.*

—s. 114—

See ante, s 40 AND ss 63, 64 AND 114.

See ACCOMPLICE.

See DEED—ATTESTATION. [7 C. W. N., 384

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 30 Calc., 1

—Ill. (c)—

See WARRANT OF ARREST—CIVIL CASES . . 6 C. W. N., 845

—Ill. (g)—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS. [I. L. R., 30 Calc., 1033

—s. 115—

See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES. [I. L. R., 26 Mad., 79

See EJECTMENT, SUIT FOR. [I. L. R., 29 Calc., 871

See ESTOPPEL—ESTOPPEL BY CONDUCT.

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L R., 27 Bom., 515

See LAND-REVENUE. [I. L. R., 25 Bom., 714, 752

—s. 116—

See ESTOPPEL—ESTOPPEL BY CONDUCT. [7 C. W. N., 575

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 27 Bom., 515

—s. 118—

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES [I. L. R., 23 All., 90

—s. 124—

See PRIVILEGED COMMUNICATION. [7 C. W. N., 246

—s. 133—

See ACCOMPLICE

—s. 154—

See WITNESS—CIVIL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . 6 C. W. N., 513

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . I. L. R., 23 Calc., 594

EVIDENCE ACT (I OF 1872)—*concluded.*

——s. 155, cl. (3)—

—*Statements previously made by witnesses—Inadmissibility as substantive evidence.*—Two persons made statements to the effect that *C* and another robbed them and caused hurt while doing so One statement was made to their employer, and the other to the head constable. *C* was subsequently charged, and these two persons were called as witnesses for the prosecution, but they then denied that *C* was one of the men who had assaulted them. Their previous statements were filed, but neither the employer nor the head constable was called to depose to the terms of the statements which the witnesses were said to have made. *Held* that the former statements referred to, and which implicated the accused, could be used only under s. 155 (3) of the Evidence Act, for discrediting their evidence, and not as substantive evidence against the accused. EMPEROR *v.* CHERATH CHOYI KUTTI (1902)
[I. L. R., 26 Mad., 191

EXAMINATION FOR PLEADERSHIP OR MOOKHTEARSHIP.

See BOARD OF EXAMINERS.
[I. L. R., 28 Calc., 479

EXAMINATION OF ACCUSED PERSON.

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS
[I. L. R., 28 Calc., 689

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER . 5 C. W. N., 864

—*Examination of the accused under s. 342, Criminal Procedure Code—Impropriety of* [illegible]

[illegible]

It is objectionable to direct examination towards obtaining from the accused some explanation in regard to matter which he had previously mentioned in his confession and has already repudiated as untrue, or to endeavour to elicit information in regard to statements made by a witness. KING-EMPEROR *v.* BHUT NATH GHOSE (1902) . 7 C. W. N., 345

EXCHANGE.

See TRANSFER OF PROPERTY ACT, s. 118.
[5 C. W. N., 724
6 C. W. N., 905

—— of stamps—

See COURT FEES ACT (VII OF 1870), s. 34.
[I. L. R., 30 Calc., 921

EXCISE LAWS.

See BENGAL EXCISE ACT.

See BOMBAY ABKARI ACT.

See MADRAS ABKARI ACT.

EXECUTION OF DECREE.

See ACQUIESCENCE . 7 C. W. N., 170

See APPEAL—

EXECUTION OF DECREES;

SALE IN EXECUTION OF DECREE.

See ARREST—CIVIL ARREST.

See ATTACHMENT.

See BENAMI TRANSACTION—CERTIFIED PURCHASERS—CIVIL PROCEDURE CODE, s. 317.

See BENGAL TENANCY ACT, s. 148, CL. (*h*).
[6 C. W. N., 91

See CIVIL PROCEDURE CODE—

s. 230;

s. 232;

s. 244;

s. 257A;

ss. 304 TO 319;

s. 501 . . 6 C. W. N., 710

See CLAIM TO ATTACHED PROPERTY.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 26 Mad., 31
„ 28 Bom., 109

See DECLARATORY DECREE, SUIT FOR—REMOVING ATTACHMENT.
[I. L. R., 25 All., 347

See FOREIGN COURT, JUDGMENT OF.
[6 C. W. N., 829

See FRAUDULENT DECREE.
[I. L.R., 30 Calc., 718

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.
[I. L. R., 24 Mad., 689

EXECUTION OF DECREE—*continued*

See INSOLVENCY—

CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE;

INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—EXECUTION OF DECREE.

See INTEREST—

MISCELLANEOUS CASES—MESNE PROFITS;
[I. L. R., 25 All., 275

WHERE NO STIPULATION FOR, OR STIPULATED TIME HAS EXPIRED —DECREES

See LIMITATION—QUESTION OF LIMITATION . . . 6 C. W. N., 348

See LIMITATION ACT, 1877, SCH. II—

ART 14,
[I. L. R., 24 All., 467

ART. 165;
[I. L. R., 25 All., 343

ARTS. 178 AND 179;
[I. L. R., 24 All., 542

ART 179,

ART. 180 . 7 C. W. N., 793

See MESNE PROFITS—

ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS;

MODE OF ASSESSMENT AND CALCULATION.

See MORTGAGE—SALE OF MORTGAGED PROPERTY

See PAYMENT INTO COURT.
[I. L. R., 25 Mad., 535

See RES JUDICATA—

GENERAL CASES;
[I. L. R., 24 All., 133

ORDERS IN EXECUTION OF DECREE.

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See SALE FOR ARREARS OF RENT.

See SALE IN EXECUTION OF DECREE.

See SET-OFF—CROSS DECREES.
[I. L. R., 24 All., 481

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 29 Calc., 644

See SURETY—

LIABILITY OF SURETY;
[I. L. R., 24 Mad., 560, 637

ENFORCEMENT OF SECURITY.
[I. L. R., 30 Calc., 1060

See TRIBUTARY MAHALS OF ORISSA.
[6 C. W. N., 573

EXECUTION OF DECREE—*continued.*

See WARRANT OF ARREST—CIVIL CASES.
[6 C. W. N., 845

——application for—

See BENGAL TENANCY ACT, SCH. III, ART 6 . . 5 C. W. N., 763

See CERTIFICATE OF ADMINISTRATION.
[I. L. R., 24 Mad., 22

See CIVIL PROCEDURE CODE, s. 230.

See LIMITATION ACT, 1877.
[I. L. R., 28 Calc., 465

See LIMITATION ACT, 1877, SCH. II—

ART 179;

ART. 180

See PRACTICE—CIVIL CASES—EXECUTION OF DECREE, APPLICATION FOR.

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE . I. L. R., 28 Calc., 122

——execution against representatives—

See REPRESENTATIVE OF DECEASED PERSON.

——for pre-emption—

See LIMITATION ACT, 1877, SCH. II, ARTS. 178 AND 179 . I. L. R., 24 All., 300

——joint decree—

See LIMITATION ACT, 1877, ss. 7 AND 8, AND SCH II, ART. 179.
[I. L. R., 25 Mad., 431

——notice of—

See LIMITATION ACT, 1877, SCH. II, ART. 179—NOTICE OF EXECUTION.

——order dismissing objection to—

See APPEAL—DECREES.
. [I. L. R., 28 Calc., 81

——order setting aside sale is an orde relating to execution—

See SPECIAL OR SECOND APPEAL.
[I. L. R., 28 Calc., 116

——proceedings in execution—

See INSOLVENT ACT (11 & 12 VICT., c. 21) . . I. L. R., 28 Calc., 419

See PRACTICE—CIVIL CASES—EXECUTION PROCEEDINGS

——stay of—

See APPEAL—ORDERS.
[I. L. R., 24 Mad., 358

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

See INJUNCTION.

——step in aid of—

See LIMITATION ACT, 1877, SCH. II, ART. 179—STEP IN AID OF EXECUTION.

EXECUTION OF DECREE—*continued.*

1. APPLICATION FOR EXECUTION, AND POWERS OF COURT.

1.—Execution in terms of decree—*No modification of decree allowed in execution—Husband and wife—Maintenance—Practice—Procedure.*—Where a decree in unconditional terms ordered maintenance to be paid by a husband to a wife: *Held* that, on an application by her for execution of the decree, an objection by the husband that she had by her conduct forfeited her right to maintenance could not be entertained. Neither party could in execution go behind the decree or add a condition which it did not contain. No modification of a decree can be allowed in execution thereof on

2.—Limitation—*Civil Procedure Code, s 230—Act IV of 1882 (Transfer of Property Act), ss. 88 and 90.*—*Held* that a decree, which is a combination of a decree for sale on a mortgage under s. 88 of the Transfer of Property Act, 1882, with the decree provided for by s 90 of the same Act, cannot be treated as a decree for money to which the provisions of s 230 of the Code of Civil Procedure are applicable. *Jugal Kishore v. Cheda Lal, Weekly*

3.—Refund—*Civil Procedure Code (Act XIV of 1882), s 583—Jurisdiction—Refund, application for.*—A mortgagee, in execution of a money

viously purchased by the mortgagee. In the mean- ... directed by ... ebtors there- ... for a refund ... of the 2 annas share. *Held* that the application fell properly within s. 583, Civil Procedure Code, and should have been made not before the Subordinate Judge, but before the District Judge who had "passed the order against which the appeal was preferred." KHEM NARAIN CHOWDHURY v. GANESHO KUAR (1899) [5 C. W. N., 287

4.—Set off—*Civil Procedure Code (Act XIV of 1882), s 244—Execution of decree passed on usufructuary mortgage—Continuation of possession by mortgagees subsequently to decree—Claim to set off profits thus accrued from decree amount—Application for order absolute—Transfer of Property Act (IV of 1882), s. 89.*—By a decree passed on a compromise in a suit for the amount due under a mortgage, defendants were ordered to pay R770 to plaintiffs within a year, and in default of payment the amount was to be recovered by sale of the mortgaged and other property. By the terms of the mortgage, possession was given in lieu of interest, but the decree was silent as to possession and interest. Upon an application being made for execution of the decree by sale of the property referred to in it, the District Judge held that, if the petitioners had continued in possession of the mortgaged property ever since the date of the decree, it would be necessary to take an account to ascertain whether the decree had been satisfied, and dismissed the petition. *Held* that such an order was wrong, inasmuch as it went behind the decree, instead of executing it. *Held* also that the application, in which the decree-holder stated that there had been default in payment of the decree amount and applied for sale, was an application for an order absolute for sale. APPA RAO v. KRISHNA AYYANGAR (1901) . . I. L. R., 25 Mad., 537

EXECUTION OF DECREE—*continued.*

2. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION.

5.—Foreign Court—*Civil Procedure Code (Act XIV of 1882), ss. 223, 224, 229A and 229B—British Courts in India, power of, to send their decrees for execution to Foreign Courts.*—The Tributary Mahals of Orissa do not form part of British India; therefore, in the absence of a prior notification in the *India Gazette*, as specified in ss. 229A and 229B of the Civil Procedure Code, no decree by a Court in British India can be sent for execution into a territory such as Mayoorbhunj, which is a Tributary Mahal. *Kastur Chand Gujar v. Parsha Mahar (1887), I. L. R., 12 Bom., 230*, referred to. RATAN MAHANTI v. KHATOO SAHOO (1902) . . . I. L. R., 29 Calc., 400

6.—Surety—*Civil Procedure Code (Act XIV*

execution against judgment-debtor and surety.—

to have his decree sent for execution against the surety as well as against the judgment debtor, if his transfer has been recognized. CHATHOTH KUNHI PAKKI v. SAIDINDAVIDE KUNHAMMAD (1902) [I. L. R., 26 Mad., 258

EXECUTION OF DECREE—*continued.*

2. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*concluded.*

.—**Transfer of jurisdiction**—*Civil Procedure Code (Act XIV of 1882), ss. 223, 649—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), ss 13, 17—Execution of decree—Jurisdiction of Court, transfer of—Limitation Act (XV of 1877), s. 14*—Execution of a decree of the Court of the Munsif of Nawabgunge having been taken out in the Court of the Munsif of Maldah by reason of transfer of the local jurisdiction of the

kerjee v. Deno Nath Mukerjee (1897), I. L R., 25 Calc., 315, distinguished. *Held, further,* that proceedings to enforce a decree taken *bonâ fide* before a Court which the party *bonâ fide* believes to have jurisdiction is a proceeding within the meaning of s. 14 of the Limitation Act *Hira Lal v. Badri Dass (1880), I L R, 2 All, 792,* referred to. JAFAR v. KAMALINI DEBI (1900)

[5 C. W. N., 150; s.c., I. L. R., 28 Calc., 238

3. EXECUTION BY COLLECTOR.

8.—*Civil Procedure Code, ss. 310A, 320—S. 310A not applicable to proceedings in execution held by a Collector under s 320—Held* that the provisions of s 310A of the Code of Civil Procedure have no application to execution proceedings taken by a Collector under s. 320 of the Code, and the rules framed by the Local Government thereunder, governing such proceedings. SHEO PRASAD v MUHAMMAD MOHSIN KHAN (1902)

[I. L. R, 25 All., 167

4. MODE OF EXECUTION.

(a) INSTALMENTS

9.—*Decree payable by instalments—Tender—Payment by money-order where creditor had to send to the Post Office for the money—Implied authority to pay in a certain manner.*—A judg-

the other hand, two previous instalments had been

EXECUTION OF DECREE—*continued.*

4. MODE OF EXECUTION—*continued*

(a) INSTALMENTS—*concluded*

paid in a similar manner without objection on the part of the decree-holder. On this occasion the decree-holder payee temporized, so that the money was not at once returned by the Post Office to the

same manner did not amount to an implied authority to the judgment-debtor to pay by money-order. *Polglass v. Oliver (1831), 37 R R, 683,* referred to. KISHAN PRASAD v. BENI RAM (1901)

[I. L. R., 24 All., 85

(b) JOINT PROPERTY.

10.—*Hindu law—Joint Hindu family—Money decree against father—Liability of sons who were not parties to decree—Suit for declaration of son's liability*—The plaintiff, in a suit upon a bond executed by one Sarju Prasad, obtained a simple money decree against Sarju Prasad. In execution of the

Paramanick v. Hari Govinda Saha (1899), I. L R., 26 Calc., 677, followed. *Nathoo Lall Chowdhry v. Shoukee Lall (1872), 10 B L. R., 200,* referred to. MATHURA PRASAD v. RAMCHANDRA RAO (1902)

[I. L. R., 25 All., 57

(c) MORTGAGE.

11.—*Sale of mortgaged property—Order absolute for sale—Transfer of Property Act (IV of 1882), s 89*—An order absolute for sale under the provisions of the Transfer of Property Act is not indispensably necessary as a condition precedent for the sale of a mortgaged property in execution of a mortgage decree; it is sufficient that there is an order for sale passed on the application of the decree-holder. *Sheo Pershad Maity v. Nundo Lall Kar Mahapatra (1890), I L R, 18 Calc., 139,* and *Tara Prosad Roy v. Bhobodeb Roy (1895), I. L. R., 22 Calc., 931,* referred to. PHUL CHAND RAM v. NURSINGH PERSHAD MISSER (1899)

[I. L. R., 28 Calc., 73

EXECUTION OF DECREE—*continued.*

4. MODE OF EXECUTION—*continued.*

(c) MORTGAGE—*continued.*

12.—*Act IV of 1882 (Transfer of Property Act), ss. 88, 89—Decree for sale after redemption of prior mortgages—Payment of money due on the prior mortgages after the time limited by the decree—Effect of such payment.*—In a suit for sale on a mortgage in which there were prior mortgages to be redeemed, the plaintiff obtained a decree for sale conditioned on his redeeming the prior mortgages within two months. He did not do so, but about four months after the date of the decree paid the money due on the prior mortgages into Court. *Held* that, the defendant having taken no steps to redeem, the plaintiff was entitled to the benefit of this payment, though made after time, and to a decree absolute for sale *Nihali v. Mittar Sen (1898), I. L. R., 20 All., 446; Raham Ilai* ... 75; and *Sita* ... *24 All., 44,* ... *(1896), I. L.* ... distinguished. DEBI PRASAD *v.* JAI KARAN SINGH (1902) . **I. L. R., 24 All., 479**

13.—*Act IV of 1882 (Transfer of Property Act), ss 89, 90—Decree for sale of part only of the mortgaged property—Property sold* ... having proved insufficient to satisfy the mortgage-debt, the decree-holder applied for a decree over, under s. 90 of the Transfer of Property Act, against the unhypothecated property of the mortgagor. *Held* that, the original decree having been in fact passed, whether rightly or wrongly, for sale of a part only of the mortgaged property, and ... portion of the mortgaged property, and, if the sale of the remaining portion proves insufficient to satisfy the mortgage-debt, obtaining a decree under s 90 of the Transfer of Property Act against the unhypothecated property of the mortgagor. SHEO PRASAD *v.* BEHARI LAL (1902)
[I. L. R., 25 All., 79

14.—*Act IV of 1882 (Transfer of Property Act), s. 89—Order absolute for sale of a portion of the mortgaged property only—Proceeds of sale of such portion insufficient to satisfy decree—Application for further order absolute for sale of other property.*—If an order absolute for the sale of a portion only of the mortgaged property has been obtained by the mortgagee decree-holder, and the proceeds of the sale of that portion prove insufficient to satisfy the decretal debt, there is nothing in law to prevent the decree-holder from obtaining a further order to sell another portion of the mortgaged property, provided that his application is within limitation. BALKISHANJI MAHARAJ *v.* MITHU LAL (1902) . **I. L. R., 25 All., 212**

15.—*Act IV of 1882 (Transfer of Property Act), ss. 88, 89—Order absolute for sale of part of property mortgaged—Appeal from decree—Application for further order for sale of entire property for an amount including interest accrued pending the appeal.*—Certain mortgagees in whose ... judgment-debtors' appeal, applying for and obtaining a further order absolute for sale of the whole of the mortgaged property for an amount including the interest accrued due subsequently to the passing of the first order. SAT NARAIN *v.* RADHA KISHAN (1903)
[I. L. R., 25 All., 264

5. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES

16.—*Landlord and tenant—Relief against forfeiture for non-payment of rent* ... of that compromise The decree contained a stipulation that, if default should be made in payment of rent within the time fixed for payment each year, the lease should be forfeited. Default was made, and possession of the lands and the arrears of rent were sought for in execution of the decree, when it was objected that the ... adopted the contract with all its incidents It was therefore competent to the Court to relieve against the forfeiture *Shirekuli Timapa Hegda v. Mahablya, I. L. R., 10 Bom., 435,* dissented from. *Rai Balkishen Dass v. Raja Run Bahadoor Singh, L. R., 10 I. A., 162,* referred to. NAGAPPA *v.* VENKAT RAO (1900) . **I. L. R., 24 Mad., 265**

17.—*Instalment decree—Agreement before decree not to enforce payment of an instalment—Part*

EXECUTION OF DECREE—*continued.*

EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—*concluded.*

payment—Civil Procedure Code (Act XIV of 1882), s. 244—Limitation.—A decree being once made, it must be taken to be conclusive between the parties. When an instalment decree was duly made, neither an agreement that the payment of a certain instalment would not be enforced, alleged to have been come to between the parties before the decree was made, nor a plea of payment of a part of the claim, alleged to have been made before the decree for the full claim was made, can be given effect to. *Laldas Narandas* v. *Kishordas Devidas (1896), I. L. R., 22 Bom., 463*, distinguished. BENODE LAL PAKRASHI *v.* BRAJENDRA KUMAR SHAHA (1902) . . I. L. R., 29 Calc., 810; [s.c., 6 C. W. N., 833

6. EXECUTION BY AND AGAINST REPRESENTATIVES.

260—Plaintiff obtained a decree against defendant,

1882); and (3) that, the original defendant having died, the injunction could not be enforced against his son (the appellant), as an injunction does not run with the land. *Held*, as to the first objection, that, as it was not raised in the lower Courts, it could not be entertained on second appeal. As to the second objection: *held* that the order passed by the lower Courts was wrong. Their order should have been made under s. 260 of the Code of Civil Procedure (XIV of 1882). The application for execution was not in proper form, but the High Court allowed it to be amended. As to the third objection: *held* that, having regard to the provisions of s. 234 of the Civil Procedure Code, 1882, the injunction

EXECUTION OF DECREE—*continued*

6. EXECUTION BY AND AGAINST REPRESENTATIVES—*continued.*

ordered against the deceased defendant might be

19.—Defendant Company—*Civil Procedure*

(1903) . . . I. L. R., 30 Calc., 961

Bhaiya (1895), I. L. R., 20 Bom., 385 dissented from. *Venkatarama* v. *Senthivelu (1890), I. L. R., 13 Mad., 265*; *Luchmi Narain* v. *Kunji Lal (1894), I. L. R., 16 All., 449*; and *Bysaphi Lal* v. *Gopal Lal & another (1888) unreported* [MACPHERSON and GHOSE, JJ.] relied upon. The question whether the decree was obtained against the father in his representative capacity cannot be gone into in the course of execution of the decree. JUGA LAL CHAUDHURI *v.* AUDH BEHARI PROSAD SINGH (1900) . . . . . 6 C. W. N., 223

21.—Widow—*Parties—Decree against widow, whether binding upon person to whom the estate passes after widow's death.* B executed a deed, under which he gave his adoptive mother, J, during her lifetime, full power to enjoy possession of certain properties. Some alluvial lands formed on the bank of one of these properties, and were taken possession

EX PARTE DECREE—*concluded.*

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIAL . I. L. R., 30 Calc., 588

EX PARTE PROCEEDING.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION . . 6 C. W. N., 925

EXPECTANCY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY.

EXTINGUISHMENT OF RIGHT.

See LIMITATION ACT, 1877, s. 28. [5 C. W. N., 545

F

FACT.

——questions of—

See CONCURRENT JUDGMENTS ON FACTS.

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT

FALSE CHARGE.

See COMPENSATION—CRIMINAL CASES—TO ACCUSED, ON DISMISSAL OF COMPLAINT . I. L. R., 30 Calc., 123

See COMPLAINT—

INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES; [I. L. R., 30 Calc., 415

DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL . 6 C. W. N., 295

See SANCTION FOR PROSECUTION—WHEN SANCTION MAY BE GRANTED. [5 C. W. N., 254

1.—**Penal Code, s. 211**—*Indian Penal Code (Act XLV of 1860), s. 211—Code of Criminal Procedure (Act V of 1898), ss. 4 (h), 195, 476—Giving false information to police of an offence, order for prosecution for—"Complaint", meaning of—Judicial proceeding—Jurisdiction of Magistrate—Procedure.*—Where, upon a police-report that a complaint is false, the complainant is called upon to show cause why he should not be prosecuted under s. 211, Indian Penal Code he appears, and the Magistrate examines him and his witnesses, and upon that evidence comes to the conclusion that the charge is false, he can then proceed under s. 476 of the Code of Criminal Procedure and direct a prosecution. *Mouli Durzi v. Nawrangi Lall (1900), 4 C. W. N., 85,* distinguished. The Magistrate does not exercise a proper discretion when, on receipt of a police-report that the complaint is false, he forthwith orders the complainant to be prosecuted under s. 211, Indian Penal Code. The complainant should be given a reasonable time and full opportunity to prove his case before sanction is given for his prosecution. The presentation of a petition by the [illegible] is bound to hold a full judicial inquiry into the matter before proceeding further. LALJI GOPE *v.* GIRIDHARI CHAUDHURI (1900) 5 C. W. N., 106

2.——————It is improper for a Magistrate [illegible] s. 211 of [illegible] PARSI HA[illegible]

3.——————*Penal Code (Act XLV of 1860), ss. 182, 211—False charge to police of cognizable offence—False information to public servant with intent to use his lawful power to the injury of another—Charge partly true and partly false—Charge if maintainable—Reference by Presidency Magistrate—Criminal Procedure Code (Act V of 1898), s. 432.*—When a [illegible] depend upon its own circumstances. GIRIDHARI NAIK *v.* EMPRESS (1901) . . 5 C. W. N., 727

4.——————*Complaint—Dismissal of complaint as false, vexatious and mali-*[illegible] plainant and the accused, the complaint made was both false and malicious and made with some deliberation, and that the complainant, with intent to cause injury to the accused, instituted criminal proceedings against him, knowing that there was no just and lawful ground for such proceedings: *Held* that it was a case in which proceedings under s. 211 of the Penal Code should have been instituted against the complainant, and that the Magistrate, in passing an order under s. 250 of the Criminal Procedure Code, directing the complainant to pay compensation to the accused, did not exercise a proper discretion. KINA KARMAKAR *v.* PREO NATH DUTT (1901) [I. L. R., 29 Calc., 479

5.——————*False charge before Police*—The making of a false charge before the Police falls within the first portion of s. 211, Indian

FALSE CHARGE—*concluded.*

Penal Code *Queen-Empress v. Karim Buksh (1887), I. L. R., 14 Calc., 633, followed.* RAM LOGAN LAL v. EMPEROR (1903) . 7 C. W. N., 556

6.——— *Penal Code (Act XLV of 1860), ss 211, 182—Instituting false complaint—Giving false information*—The word

tion was presented with the object (as the High Court held from its terms) of bringing to the knowledge of the authorities certain matters regarding which the petitioner had received information, in order that there might not be a repetition of an

to a "charge" within the meaning of s. 211 of the Indian Penal Code. To constitute an offence under s. 182, it must be shown that the person giving the information knew or believed it to be false, or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed it to be false The fact that an information is shown to be false does not cast upon the

FALSE EVIDENCE.

See ATTEMPT TO COMMIT OFFENCE. [I. L. R., 25 All., 750

See CHARGE—FORM OF CHARGE. [I. L. R., 28 Calc., 434

See CRIMINAL PROCEEDINGS. [I. L. R., 24 Mad., 675

See FORGERY.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—FALSE EVIDENCE.

See SANCTION FOR PROSECUTION—DISCRETION IN GRANTING SANCTION. [I. L. R., 29 Calc., 887

FALSE EVIDENCE—*continued.*

1. GENERAL CASES.

1.—**Charge**—*Criminal Procedure Code (Act V of 1898), ss. 195, 477—Bail, order for, before commitment—Preliminary inquiry—Charge, framing of, if absolutely necessary—Jurisdiction—Penal Code (Act XLV of 1860), s 193—False evidence, giving of.*—S. 477 of the Code of Criminal Procedure contemplates that there should be a

out any reference to the specific false statements alleged to have been made by the witness in the course of a judicial proceeding, it was held that the order could not be regarded as a commitment under s. 477, Criminal Procedure Code. Such an order is not warranted by law, and is without jurisdiction. MOHIM CHUNDER MOZOMDAR v. KING-EMPEROR (1901) . . . 5 C. W. N., 615

2. —**Commitment**—*Criminal Procedure Code*

ment—Difference in procedure between the provisions of ss. 476 and 477—Applicability of the sections—Penal Code (Act XLV of 1860), s. 193—False evidence, giving of.—S. 477 of the

evidence was given by a witness before a Deputy Magistrate, which was in conflict with the statements of certain other witnesses, and the Deputy

person to show that his statements were not untrue o his knowledge. *Also* that the section applicable to he facts of the present case was s. 476, and that the commitment of the petitioner under s. 477 was

FOOD.

——adulteration of—

See CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899), s. 495.
[I. L. R., 30 Calc., 643

——destruction of—

See CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899), ss. 502, 505.
[I. L. R., 30 Calc., 421

FORECLOSURE.

See MORTGAGE—FORECLOSURE.

FOREIGN COURT.

See EXECUTION OF DECREE—FOREIGN COURT.

FOREIGN COURT, JUDGMENT OF.

——admissibility of, in evidence—

See TRADE MARK.
[I. L. R., 25 Bom., 433

——against insolvent, validity of—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT . I. L. R., 26 Mad., 544

1.—Suit on—*Private international law—Foreign Court—Suit on a foreign judgment to recover money due for board, lodging and tuition—Con-*

6—Order XI, Rule 1 (e), under the Judicature Act—Residence in England, if necessary to fix liability on a foreign judgment—Interest on money decreed, when no provision for such is made in foreign judgment, if recoverable—Order XLII, Rule 16—1 & 2 Vict., c. 110, s 17—Indian Interest Act (XXXII of 1839)—As a general rule, a Court can exercise jurisdiction over a foreigner,

foreigner by reason of the cause of action arising within its jurisdiction, and that foreigner is a native of British India, he cannot treat the judgment passed as a nullity merely because he did not reside within the jurisdiction of the Court which passed

FOREIGN COURT, JUDGMENT OF—*concluded.*

within the order. But it is open to a defendant to show that this is not so, and that the English Court had in fact no jurisdiction. *Gurdyal Singh* v. *Raja of Faridkot (1891), L. R., 21 I. A., 171,* followed and explained. In a suit based on a foreign judgment, the plaintiff cannot recover more than appears on the face of the judgment; and, when such judgment is silent as to interest, he cannot make the defendant liable for interest on the amount of the English judgment, the English Statutes as to judgments carrying interest (Order 42, Rule 16, and 1 & 2 Vict., c. 110, s. 17) not applying to India MOAZIM HOSSEIN *v.* ROBINSON (1901) . . . . 5 C. W. N., 741: s.c., I. L. R., 28 Calc., 641

2. ———— *Domicile—Defendant not resident or domiciled in foreign country—No appearance by defendant or submission to jurisdiction—Jurisdiction—"Foreigner"—Subject of the Sovereign both of British India and of a British colony.*—Courts generally exercise jurisdiction only over persons who are within the territorial limits of their jurisdiction, and, apart from some statutory power, cannot exercise jurisdiction over anyone beyond its limits *Whaley* v. *Busfield (1886), L. R., 32 Ch. D., 131,* referred to A judgment of a foreign Court, obtained in default of appearance

subject of a Sovereign who is the Sovereign of the country where the judgment was obtained and the country where it is sought to be enforced *Turnbull* v. *Walker (1892), 67 L. T. Rep., 767,* referred to. KASSIM MAMOOJEE *v.* ISUP MAHOMED SULLIMAN (1902)
[I. L. R., 29 Calc., 509; s.c., 6 C. W. N., 829

FOREIGN JURISDICTION ACT (XXI OF 1879).

——ss. 4, 6 and 8—

—Criminal Procedure Code, s. 4—Indian Penal Code, s. 40—Offence—Jurisdiction of Magistrate in Mysore to try and convict an European British subject for an act amounting to an offence under the Mysore law, but not an offence under the Indian Penal Code.—An European British

he was so tried and convicted (namely, being in possession of mining materials) constituted an offence

FOREIGN JURISDICTION ACT (XXI OF 1879)—*concluded*

—— ss. 4, 6 and 8—*concluded*

under the Mysore Mines Regulation, but was not an offence under the Indian Penal Code It was contended, in revision, in the Madras High Court that the conviction was wrong on the ground that a [illegible]

[illegible]

used in s 6 of the Act of 1879, is not restricted to offences as defined by s 40 of the Indian Penal Code. Nor is it restricted to any definition of "offence" to be found in the Code of Criminal Procedure, although, as a matter of fact, the present definition of "offence" in the Code of Procedure [s 4 (*o*)], which is the same as that contained in the General Clauses Act, is sufficiently wide to include the wrongful act with which the accused in the present case was charged. ADAMS *v.* EMPEROR (1903) . . . I. L. R., 26 Mad., 607

FOREIGN STATE.

——effect of insolvency proceedings in—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT . I. L. R., 26 Mad., 544

FOREIGN TERRITORY.

——taking evidence in—

See PRACTICE—CIVIL CASES—COMMISSION . . I. L. R., 30 Calc., 934

FOREIGNERS.

——jurisdiction over—

See FOREIGN COURT, JUDGMENT OF.

——suits against—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—GENERAL CASES . I. L. R., 25 Bom., 528

FOREST ACT (MAD. ACT V OF 1882).

See MADRAS FOREST ACT.

FOREST OFFICER.

——liability of, to tax—

See MADRAS DISTRICT MUNICIPALITIES ACT, SCH. A. I. L. R., 25 Mad., 747

FORFEITURE OF PROPERTY.

See HINDU LAW—

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE;

WIDOW—DISQUALIFICATIONS.

See LANDLORD AND TENANT—FORFEITURE.

See PAYMENT INTO COURT.
[I. L. R., 25 Mad., 535

—Lands attached under s 146 of the Code of Criminal Procedure, 1898, can never be forfeited to the Government. RAJAH OF VENKATAGIRI *v.* ISKAPALLI SUBBIAH (1902) . . I. L. R., 26 Mad., 410

FORGERY.

See CHARGE—FORM OF CHARGE.
[I. L. R., 28 Calc., 434
„ 30 Calc., 822

See HUNDI—ENDORSEMENT.
[5 C. W. N., 313

See SANCTION FOR PROSECUTION—DISCRETION IN GRANTING SANCTION.
[I. L. R., 29 Calc., 887

See WILL—VALIDITY OF WILL.
[6 C. W. N., 767

1.—*Penal Code (Act XLV of 1860), ss. 466, 471—Using as genuine a forged document—Person convicted of and sentenced for the forgery not also to be sentenced for the use.*—*Held* that a person who, being himself the forger thereof, has used as genuine a forged document, cannot be punished as well under s. 471 of the Indian Penal Code for the use as under s. 466 for the forgery. QUEEN-EMPRESS *v.* UMRAO LAL (1900)
[I. L. R., 23 All., 84

2.—*Penal Code (Act XLV of 1860), ss. 24, 25, 467, 471—Using a forged document, knowing it to be forged—"Fraudulently" and "dishonestly," meaning of—"False document"—Suit upon a bond for enforcement of payment—Absence of intention to cause wrongful loss, if any defence—Intention to deceive*—Intention to cause wrongful loss to another, and deception, actual or intended, are not necessary ingredients of the intent to defraud. There is a real distinction between the meaning of the terms "fraudulently" and "dishonestly", as used in the Penal Code; the former denotes an intention to deceive. The production of a forged bond by a person in a suit, with the intent to make the Court believe that he was entitled to recover money upon the basis of the parti-

[illegible]

Empress (1894), I. L. R., 22 Calc., 313; In re Dhunu Kazee (1882), I. L. R., 9 Calc., 53, referred to. *Queen-Empress v. Sheo Dayal (1885), I. L. R., 7 All., 459,* dissented from. KEDAR NATH CHATTERJEE *v.* KING-EMPEROR (1901) 5 C. W. N., 697

FORGERY—*continued.*

3.—*Penal Code (Act XLV of 1860), ss. 463, 464, 467, 474—Forgery of valuable security—False document—Onus of proof—Dishonest or fraudulent intent, proof and inference as to.*—To justify a conviction under s. 457, Indian Penal Code, it must be shown that the document is a false document within the meaning of s. 464, Indian Penal Code, and that it was forged by the accused with some intent mentioned in s 463, Indian Penal Code. It is not sufficient that some possible intent may be inferred from the facts, but it is necessary that such intent should be established by evidence. The accused was found in possession of two documents; one was a registered conveyance in respect of certain lands from one *A D* to the wife of the accused; the second purported to be a conveyance in respect of the same lands from the same vendor to the accused himself, but this was registered. The accused requested a school-boy to have the registration endorsement from the former copied on to the latter, and was thereupon arrested and charged under s. 467 with s 116, and under s 474 At the trial *A D* deposed that he never executed the second conveyance, but as regards the first he said that he had executed it in favour of accused's wife, but that the accused was in possession of the lands and had also paid him the consideration-money. *Held* that, as it was not shown that the second document was made with any of the intents mentioned in s. 463, Indian Penal Code, or that it was intended to be fraudulently or dishonestly used, a conviction under any of the above sections was not maintainable KAILAS CHANDRA DAS *v* THE CROWN (1902) . . . . . . 6 C. W. N., 382

4.—*Penal Code (Act XLV of 1860), ss 417, 511, 468—Attempting to cheat, and forgery—Application to University for duplicate certificate by person not entitled—Offence*—*S* held a Matriculation certificate which had been issued to him by a University. *C* had failed to pass the Matriculation Examination. The Registrar of the University received [illegible] that [illegible] a du[illegible] letter [illegible] head-master of a local school, corroborating the statement as to the loss, and supporting the application for the issue of a duplicate This document had not, in fact, been written by the head-master, and *S* had not [illegible] accused on both charges The Sessions Judge, on [illegible] in the High Court: *Held* that the charge of cheating must fail, inasmuch as there was no proof that the deception practised by the accused on the Registrar of the University had caused harm or damage to him or to the University which he represented. Nor was it shown that the accused, in applying for the duplicate certificate, had any intention of

FORGERY—*concluded.*

causing wrongful gain to himself or wrongful loss to the University, to whom he had paid a fee greater than the cost price of the certificate. The charge of forgery also failed, for, assuming that accused had fabricated the head-master's certificate, it was not shown that he had done so fraudulently or dishonestly and with intent to cause damage or injury to the public or to anyone The question before the Court was not as to his intended use of the certificate subsequently. Even if he had such an intention, this mere preparation did not amount to an attempt to commit an offence within the meaning of s. 511 of the Indian Penal Code. KING-EMPEROR *v.* SRINIVASAN (1902) . . . I. L. R., 25 Mad., 726

FRANCE, LAW OF.

See FRENCH LAW.

FRAUD.

See ARBITRATION—AWARDS—DELAY IN MAKING AWARD [I. L. R., 26 Bom., 132

See BENAMI TRANSACTION. [I. L. R., 28 Calc., 370

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL. I. L. R., 30 Calc., 369

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION. [I. L. R., 25 All., 19

See ONUS OF PROOF—MORTGAGE [5 C. W. N., 403

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL . . 6 C. W. N., 429

See RIGHT OF SUIT—

DECREES; . 5 C. W. N., 559 [I. L. R., 28 Calc., 475

FRAUD.

See SALE IN EXECUTION OF DECREE—

INVALID SALES—FRAUD;

SETTING ASIDE SALE—GENERAL CASES I. L. R., 26 Bom., 543

SETTING ASIDE SALE—IRREGULARITY . I. L. R., 30 Calc., 142

——concealment of material facts—

See HUSBAND AND WIFE. [6 C. W. N., 809

——fraudulent assignment—

See DEBTOR AND CREDITOR. [I. L. R., 26 Bom., 577

FRAUD—*concluded.*

——fraudulent conveyance—

See TRANSFER OF PROPERTY ACT, s 53
[I. L. R., 25 Bom., 202
" 27 Bom., 322

——fraudulent transfer—

See TRANSFER OF PROPERTY ACT, s 53
[I. L. R, 27 Bom., 146

——on Court—

See LIMITATION—QUESTION OF LIMITATION . . . 6 C. W. N., 348

——setting aside sale, on ground of—

See CIVIL PROCEDURE CODE, s 244—QUESTIONS IN EXECUTION OF DECREE
[6 C. W. N., 279, 283

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD . . I. L. R., 29 Calc., 370

——suit to recover possession of immovable property by setting aside document on ground of—

See DOCUMENT.
[I. L. R., 30 Calc., 433

1. WHAT CONSTITUTES FRAUD

1.—*Abuse of influence*—The obtaining of property or of any benefit, through the undue and unconscientious abuse of influence by a person in ... fraud of ... *(1884)*, 6 ... v. Nis- ... N., 353

2 ALLEGING OR PLEADING FRAUD

2.—*Appeal*—A question of fraud cannot be ...

FRAUDULENT DECREE.

...

FRAUDULENT DECREE—*concluded.*

I. L R, 10 Bom., 338, and *Natesa Ayyar v. Annasami Ayyar (1901), I. L. R, 25 Mad, 426,* referred to PASUPATI NATH BOSE v. NANDO LAL BOSE (1903) . . . I. L. R., 30 Calc., 718

FRENCH LAW.

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE.
[I. L. R., 24 Mad., 650

FULL BENCH.

See REFERENCE TO FULL BENCH.

FUNERAL EXPENSES.

See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS . . I. L. R., 25 All., 266

FURTHER INQUIRY.

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL
[I. L. R., 28 Calc, 102

See CRIMINAL PROCEDURE CODE, s. 437.

See REVISION, CRIMINAL CASES—DISCHARGE OF ACCUSED.

G

GAMBLING.

See CONTRACT—WAGERING CONTRACTS

1.—Bengal Act—*Gambling Act (Ben Act II of 1867), ss. 1, 6—Gambling in a common gaming-house—Common gaming-house—Private house—Coins ... and when instruments of gambling* ...

... articles or instruments are found is a common gaming house within the meaning of the Act. AMRIT SINGH v. KING-EMPEROR (1901)
[5 C. W. N., 503

2. ———— *Gambling Act (Ben. Act II of 1867), s 11—Ground enclosed by high wall forming a thakurbari, whether a "place" within the section—Place, meaning of—Public place—Confiscation of money for which game is played.*—The word "place", as used in s. 11 of the Gambling Act (Ben. Act II of 1867), cannot but refer to a public place, and is used *ejusdem generis* with the other words in the section, public market, fair, street, thoroughfare; and the place must be of the same

GAMBLING—*concluded.*

character as a public market, fair, street or thoroughfare. A *thakurbari* surrounded by a high compound wall is not a public place as contemplated by the section. When a conviction under s 11 of Ben Act II of 1867 is set aside, the order for confiscation of the money for which the game was played must necessarily fall. KHUDI SHEIKH *v.* KING-EMPEROR (1901) . . 6 C. W. N., 33

3.—**Bombay Act**—*Bom Act IV of 1887, ss. 3, 4, 5 and 7—Instruments of gaming—Books and telegrams—Game—Procedure—Police officer investigating offence not to conduct prosecution—Criminal Procedure Code (Act V of 1898), ss 495 (cl. 4) and 537.*—The accused was partner in a shop at Surat, in which he ostensibly carried on the business of cloth selling, but in which he also actually carried on a *satta*, or wagering business The wagers were made with regard to the last unit of the figures denoting the prices for which opium was sold at Calcutta on a given day Information as to these sales was received by telegraph from Calcutta The firm kept books in which the wagers were recorded The accused was convicted and sentenced under ss 4 and 5 of Bombay Act IV of 1887. *Held* by CANDY and FULTON, JJ (confirming the conviction under s 4), that the books kept by the firm for the purpose of recording the wagers were "instruments of gaming" within the definition of s 3 of Bombay Act IV of 1887. *Held* by CANDY, J, that the telegrams received and used for the purpose of determining the result of the bets were also within the definition *Held* also (setting aside the conviction under s 5) that the wagering with which the accused was charged was not a "game", and the presumptions under s 7 and cl. 2 of s 5 of the Act did not apply. A police Inspector, who has taken part in the investigation into an offence, is not qualified to conduct the prosecution of the person charged with that offence (Criminal Procedure Code, Act V of 1898, s 495, cl. 4). EMPEROR *v.* TRIBHOVANDAS BRIJBHUKANDAS (1902) . . . I. L. R., 26 Bom., 533

4.—————— *Bom. Act IV of 1887, s. 8—Power of seizing money 'found therein'—Interpretation.*—The power of seizing money found in a gaming house, under s 8 of Bombay Act IV of 1887, does not extend to money found on the persons of those who may at the time be in such gaming house EMPEROR *v.* WALLI MUSSAJI (1902) [I. L. R., 26 Bom., 641

5.—**Penal Code**—*Indian Penal Code (XLV of 1860), ss. 268, 290—Gambling, whether an offence where the Gambling Act is not in force—Whether gambling is a public nuisance*—Gambling is not an offence such as is defined in s 268, Indian Penal Code (public nuisance). Certain persons were found to have gambled at a place where the Gambling Act was not in force, and were convicted under s. 290, Indian Penal Code (public nuisance) *Held* that the conviction was bad. SASI KUMAR BOSE *v.* EMPEROR (1903) . . . . . 7 C. W. N., 710

GAMING HOUSE.

See GAMBLING . . 5 C. W. N., 503

GANJAM AND VIZAGAPATAM AGENCY COURTS ACT (XXIV of 1839).

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL.

[I. L. R., 26 Mad., 266

See RULES MADE UNDER ACTS—ACT XXIV OF 1839 . I. L. R., 24 Mad., 345

GARHWAL.

See KUMAON AND GARHWAL.

GENERAL CLAUSES ACT, 1887 (I OF 1887).

——s. 3, c. (13)—

See VALUATION OF SUIT—SUITS—PARTITION . . I. L. R., 24 All., 381

GENERAL CLAUSES ACT (X OF 1897).

——s. 3 (27)—

See NEPAL . . 7 C. W. N., 635

——s. 8 and s. 24 ("order")—

See PETROLEUM ACT (VIII OF 1899), ss. 1 (3), 11 AND 15 . 7 C. W. N., 658

GENERAL CLAUSES ACT (BEN. ACT I OF 1899).

——s. 8—

See CALCUTTA MUNICIPAL ACT, 1899, SS 391 AND 449 . 7 C. W. N., 374

——s. 8 (c)—

See CALCUTTA MUNICIPAL ACT, 1899, s 449 . . . 7 C. W. N., 554

GENERAL CLAUSES ACT (MADRAS).

See MADRAS GENERAL CLAUSES ACT.

GHATWALI TENURE.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY.

[I. L. R., 28 Calc., 483

See PARTITION—RIGHT TO PARTITION—PARTITION OF PORTION OF PROPERTY.

[5 C. W. N., 185

—**Power of alienation**—*Ghatwal, right of, to grant perpetual lease—Bengal Tenancy Act (VIII of 1885), ss. 5, 181—Tenure—Holding—Contract.*—As a general principle, a *ghatwal* is not competent to grant a lease in perpetuity, and his successor is not bound to recognize such an incumbrance. *Grant and the Court of Wards v. Bungshee Deo (1871), 15 W. R. 38,* followed. A lease in perpetuity, granted to the plaintiff by defendant No 7, who is a *ghatwal* jointly with the predecessors of the other *ghatwal* defendants, is

GHATWALI TENURE—*concluded.*

inoperative even against defendant No 7, as the lease is one and indivisible. *Held, also,* on the construction of the lease and findings of the lower Appellate Court, that the lease created a tenure and not a *raiyati* holding NARAIN MULLICK *v* BADI ROY (1901)
[6 C. W. N., 94; s.c., I. L. R., 29 Calc., 227

GIFT.

See HINDU LAW—

ADOPTION—WHO MAY OR MAY NOT ADOPT;
[I. L. R., 26 Bom., 491

GIFT

INHERITANCE—SPECIAL HEIRS—MALES—HUSBAND, HEIRS OF.
[I. L. R., 28 Calc., 311

See LIFE ESTATE . 5 C. W. N., 569

See MAHOMEDAN LAW—

ENDOWMENT;
[I. L. R., 30 Calc., 666

GIFT

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.
[I. L. R., 26 Mad., 365

See WILL—CONSTRUCTION.
[6 C. W. N., 321
I. L. R., 26 Bom., 319

——for maintenance—

See CONTRACT—CONSTRUCTION OF CONTRACTS . . L. R., 28 I. A., 198

——registration of, after death of donor—

See REGISTRATION ACT, 1877, s. 17
[I. L. R., 25 Mad., 672

——to a class—

See TRUST . I. L. R., 26 Bom., 449

—*Construction of document—Clause in deed of gift, excluding claims of the donor or his heirs or representatives* —A Hindu transferred to his daughter a portion of his immovable property, by an instrument which purported to be a deed of gift, the con- [illegible]

[I. L. R., 23 All., 300

GOOD BEHAVIOUR.

See SECURITY FOR GOOD BEHAVIOUR.

GOOD FAITH.

See BONA FIDES.

GOVERNMENT.

See ACT OF STATE.

See PREROGATIVE OF THE CROWN.

——appeal by—

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.

——liability of—

See SECRETARY OF STATE.
[I. L. R., 27 Bom., 189

——Resolution of—

See SECRETARY OF STATE.
[I. L. R., 27 Bom., 189

GOVERNMENT OFFICERS, ACTS OF.

See SECRETARY OF STATE.
[I. L. R., 27 Bom., 189

GOVERNMENT SECURITIES.

——deposit of—

See LIMITATION ACT, 1877, SCH. II, ART. 145 . . 7 C. W. N., 476

GRANT.

——by Government—

See CROWN LANDS
[I. L. R., 26 Mad., 268

See HINDU LAW—

CUSTOM—IMPARTIBILITY;
[I. L. R., 29 Calc., 828

INHERITANCE — IMPARTIBLE PROPERTY.

See RESUMPTION—EFFECT OF RESUMPTION . . I. L. R., 26 Mad., 339

See SUCCESSION . L. R., 30 I. A., 190

——construction of—

See LEASE—CONSTRUCTION.
[I. L. R., 30 Calc., 683

See LIFE ESTATE . 5 C. W. N., 569

See SERVICE TENURE.
[I. L. R., 26 Mad., 403

——construction of re-grant—

See EJECTMENT, SUIT FOR.
[L. R., 23 I. A., 169

GRANT—*continued.*

1. CONSTRUCTION OF GRANTS.

1.—*Construction of a grant for maintenance—Use of the words "proprietors" and "for ever"—Grant for life not extended thereby.*—An Oudh *talukdar*, who had inherited an impartible estate descending to a single heir, made a grant of villages for the maintenance of a member of the joint family to which they both belonged. Documentary evidence bearing on the duration of the grant consisted of a *laz-dawa*, or deed of relinquishment of claim, executed by the grantee, and of petitions by the grantor for the entry of change of names in the revenue record, with such entry. And relevant facts and circumstances were in evidence. *Held* that the purpose of the grant, which was for the maintenance of the grantee, was *primâ facie* an indication that the grant was intended to be only for his life; and that its true construction was not extended by the use of the words "proprietor" and "for ever" in the documents. [illegible] rightly declr[illegible] estate of inhe[illegible] did not exter[illegible] been reversed [illegible] grounds, and [illegible] *Maulvi Abdul Majid* v *Fatima Bibi (1885), L. R., 12 I A, 159,* referred to, the principle in that case applying to this RAMESHAR BAKHSH SINGH *v.* ARJUN SINGH (1900)

[I. L. R., 23 All., 194; s.c., L. R., 28 I. A., 1

2.—*Grant, whether for maintenance only or for an estate of inheritance—Intention as shown by documents—Partition by grantees on assumption that grant conferred an hereditary estate.*—On a question as to whether a grant of lands made in 1844 out of the *zamindari* of Nidadavolu to collateral members of the family was a maintenance [illegible] [illegible] granted in 1844 they had in 1846 made a partition "through and in the [illegible]" and [illegible] on an [illegible] Com- [illegible] Court) *held*, on the construction of the documents evidencing the grant, and under the circumstances of the case, that it conferred an hereditary estate, and that the title was completed by the partition. RAJAJI BAHADUR GARU *v.* PARTHASARADHI APPA RAU (1902)

[I. L. R., 26 Mad., 202; s.c., L. R., 30 I. A., 14

3.—*Deeds, interpretation of—Grant by way of lease—"Istemrari mokurari"—Grant for life—Tenure, permanent and hereditary—Grant for maintenance—Impartible Raj—Declaratory suit—Bengal Tenancy Act (VIII of 1885), ss 106, 107, 109—Limitation Act (XV of 1877), Sch. II, Art 14—Civil Procedure Code (Act XIV of 1882), s. 375—Registration Act (III of 1877), ss. 17, 49.*—A grant was made of certain villages by the proprietor of an impartible Raj to his wife, in istemrari mokurari, at a fixed annual rent, the deed containing the following covenant, "I, the declarant, or my representatives, have and shall have no claim, right or dispute thereto, except the aforesaid reserved rent." *Held* (1) that the use of the words 'istemrari mokurari' in the lease was not sufficient to create a permanent and hereditary tenure; and (2) that the words excluding the claim of, or right of interference by, the grantor or his representatives did not necessarily import the creation of a permanent and hereditary tenure but [illegible]

GRANT—*concluded.*

2. POWER TO GRANT.

4.—*Darkhast rules—Grants of house-sites—Grant by Tahsildar—Appeal to Divisional officer—Failure to reverse grant—Validity of grant.*—By the *darkhast* rules, as amended in 1894, an appeal is provided to a Divisional officer from the orders of a *Tahsildar* in respect of grants of building-sites A *Tahsildar* passed an order granting an application for a building-site, and an appeal was preferred therefrom to the Sub-Collector (the Divisional officer) This officer apparently referred the appeal to the Collector, who passed an order annulling the grant The Collector's order was sent to the Divisional officer, who communicated it to the *Tahsildar*. On a suit being instituted by the applicant for a declaration of his title to the land: *Held* that he had acquired a good title The appeal lay to the Sub-Collector, who had exercised no discretion with reference to the question which came before him on appeal. He had not dealt with the appeal, or made any order thereon. No authority had been cited to show that, in matters not dealt with by the regulations, the Collector has a revisional power similar to that given to him by the regulations in matters dealt with therein, and that the Collector's order on appeal to the Sub-Collector ought to be regarded as an order made by the Collector in the legal exercise of his revisional powers. The result was that the order of the *Tahsildar* granting the title had not been legally set aside, and the plaintiff had acquired a good title by virtue of the grant duly made by the *Tahsildar*. SAPPANI ASARI *v.* COLLECTOR OF COIMBATORE (1903)

[I. L. R., 26 Mad., 742

GRATIFICATION.

——illegal—

See ILLEGAL GRATIFICATION.

GRAVE-YARD.

See MAHOMEDAN LAW—CUSTOM.

[I. L. R., 28 Bom., 193

GRIEVOUS HURT.

See HURT—GRIEVOUS HURT.

GROUNDS OF APPEAL.

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL.

GUARANTEE.

See PARTNERSHIP—

RIGHTS AND LIABILITIES OF PARTNERS; . . 6 C. W. N., 429

SUITS RESPECTING PARTNERSHIPS [I. L. R., 25 Bom., 808

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL . 6 C. W. N., 429

See RES JUDICATA—CAUSES OF ACTION—CONTINUING GUARANTEE [I. L. R., 27 Bom., 418

—*Contract Act (IX of 1872), s. 260—Guarantee, ... of—Surety—Liability of surety to a*

[illegible]

sued the defendants on the bond. An obj... way of demurrer to the plaintiff's claim—that no cause of action was shown to exist against the defendants—having been taken: *Held* that, there being a change in the constitution of the firm before the alleged defalcations took place, the guarantee given by *E* would be taken as revoked by virtue of s 260 of the Contract Act; and, the alleged embezzlements having been committed by *B* while in the service of the new firm of "N. Mookerjee and Son," and not that of N. C. Mookerjee, there was no breach of the conditions of the bond: the objection taken by the defendants must therefore prevail, and the suit be dismissed. NEEL COMUL MOOKERJEE *v.* BIPRO DASS MOOKERJEE (1901) . I. L. R., 28 Calc., 597

GUARDIAN.

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE. [I. L. R., 30 Calc., 613

GUARDIAN—*continued.*

See DECLARATORY DECREE, SUIT FOR—ADOPTION . I. L. R., 30 Calc., 613

See GUARDIANS AND WARDS ACT (VIII OF 1890).

See HINDU LAW—GUARDIAN.

See LIMITATION—*QUESTION OF LIMITATION* . . . 7 C. W. N., 594

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS [I. L. R., 26 Bom., 221

See LUNATIC.

See MAHOMEDAN LAW—GUARDIAN.

See MINOR.

See SUCCESSION CERTIFICATE ACT, ss. 6, 7 AND 9 . I. L. R., 25 Bom., 523

——ad litem—

See CIVIL PROCEDURE CODE, s 108. [I. L. R., 24 All., 383

See LUNATIC . I. L. R., 24 Mad., 501

See MINOR—REPRESENTATION OF MINOR IN SUITS.

See MORTGAGE—REDEMPTION—MISCELLANEOUS CASES . I. L. R., 27 Bom., 23

——certificated—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE [7 C. W. N., 90

——continuance of parent's guardianship—

See KIDNAPPING, I. L. R., 24 Mad., 284

——non-appearance of—

See CIVIL PROCEDURE CODE, s 108. [5 C. W. N., 58

——powers of—

See LIMITATION ACT, 1877, s. 20 [I. L. R., 29 Ca c., 647

1. APPOINTMENT.

1.—*Minor—Guardian appointed of property of a minor who was a member of a joint Hindu family, the property being joint property—Sanction ... for sale of family property in which mi... share—Jurisdiction of High Court.* ... general jurisdiction, and apart from the G... Wards Act (VIII of 1890), the High Co... to appoint a guardian of the property ... is a member of joint Hindu family ... minor's property is an undivided share ... property. The applicant in this ... be appointed guardian, also sought ... Court for a sale of the family p... minor was interested. *Held*,

GUARDIAN—*concluded.*

1. APPOINTMENT—*concluded.*

cumstances of the case, that the sanction should be given. *In re* MANILAL HURGOVAN (1900)
[I. L. R., 25 Bom., 353

2. DUTIES AND POWERS OF GUARDIANS.

2.—*Guardian and minor—Pre-emption—Refusal of guardian on behalf of minor to claim pre-emption—Minor bound by such refusal.*—The guardian of a minor is competent to exercise on behalf of the minor, or to refuse to exercise, a right of pre-emption accruing to the minor, and, if he refuses in good faith and in the interests of the minor, the minor is bound by such refusal. *Lal Bahadur Singh v. Durga Singh (1881), I. L. R., 3 All., 437,* referred to. UMRAO SINGH *v.* DALIP SINGH (1901)
[I. L. R., 23 All., 129

3 DISQUALIFIED PROPRIETORS.

3.—*Act XIX of 1873 (N.-W. P. Land-revenue Act), s. 205B—Attachment of property of disqualified proprietor—Profits accruing after the* [illegible]

[illegible] accrue after the release of the *corpus* from the superintendence of the Court of Wards *Himanchol Singh v. Jhamman Lal (1900), I. L. R., 22 All., 364,* referred to. JHAMMAN LAL *v.* HIMANCHAL SINGH (1901) . . . I. L. R., 24 All., 136

GUARDIANS AND WARDS ACT (VIII OF 1890).

See GUARDIAN.

See MINOR—CUSTODY OF MINORS.
[I. L. R., 25 Bom., 574

——ss. 7, 11, 13, and 46—

[illegible]

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concluded.*

——ss. 29, 30—

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.
[I. L. R., 23 All., 288
" 25 All., 59

——ss. 34, 41—

[illegible]

Court, as representing the interest of the minor, certain summary powers for the protection of his property during minority. S. 41 cannot be construed into giving the Court, by summary procedure, a power to order accounts to be rendered after the termination of guardianship. NABU BEPARI *v.* SHEIKH MAHOMED (1900) . 5 C. W. N., 207

——s. 46—

See ante, ss. 7, 11, 13 AND 46

——ss. 47, 48—

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.
[I. L. R., 30 Calc., 613

GUJARAT TALUKDARS' ACT (BOM. ACT VI OF 1888).

—s. 2 (a)—*Talukdar—Purchaser from "talukdar"—Definition.*—The term "*talukdar,*" as defined by s. 2 (a) of the Gujarat *Talukdars'* Act (Bombay Act VI of 1888), does not include a purchaser of a *talukdar's* share sold in execution of a decree passed against him. NARANDAS PARBHUDAS *v.* PARSHOTTAM VALU (1902) . I. L. R., 26 Bom., 757

H

HABEAS CORPUS, WRIT OF.

—**Right of appeal from order refusing to issue writ of habeas corpus**—*Judgment not being order passed in criminal trial—Powers of High Court hearing reference under s. 307 of the Criminal Procedure Code—Jurisdiction to commit European to jail—Letters Patent, 1865, cls. 15, 25, 26, 27, 28—Code of Criminal Procedure (Act V of 1898), ss. 307, 383, 491 and 456—Prisoners* [illegible]

[illegible] as well as civil cases, and that an order of a single Judge of the High Court made in the exercise of its ordinary original criminal jurisdiction, refusing an application by a prisoner under ss. 456 and 491 of the Code of Criminal Procedure for release from alleged illegal custody under a sentence of imprisonment passed by a Divisional Bench of the Court, is a "judgment not being a sentence or order passed or

HABEAS CORPUS, WRIT OF—*concluded.*

made in any criminal trial," within the terms of cl. 15 of the Letters Patent, and that an appeal lies from such order to the High Court *Held*, further, that the jurisdiction which the High Court exercises in hearing a case submitted to it under s 307 of the

s.c., 6 C. W. N., 254

HACKNEY-CARRIAGE.

——keeping horses for, without license—

See Bengal Municipal Act (III of 1884), ss 263, 273 . 5 C. W. N., 331

HACKNEY-CARRIAGE ACT (BOM. ACT VI OF 1863).

—s. 6—*License—License of public conveyance*

be exercised after he has made himself acquainted with the conveyance to be licensed and has considered

577 of the High Court Rules, all applications under s. 45 of the Specific Relief Act (I of 1877) should be made by motion, and not by petition. Gell v. Taja Noor (1903) . . I. L. R., 27 Bom., 307

HANDWRITING.

See Limitation Act, 1877, s 20 [I. L. R., 26 Bom., 316

HAQ.

See Zamindar, Rights of. [I. L. R., 23 All., 209

HARBOURING OFFENDER.

See Penal Code, s. 216B. [I. L. R., 25 All., 261

HÂTS.

See Specific Relief Act (I of 1877), s. 9. [I. L. R., 29 Calc., 614

HEIR.

See Hindu Law—

Alienation—Alienation by Widow—Alienation for Legal Necessity or with consent of Heirs or Reversioners;

Inheritance—Special Heirs.

——bequest to—

See Mahomedan Law—Inheritance [I. L. R., 30 Calc., 683

HEREDITARY OFFICE.

—*Form of suit*—Two persons joined in a suit, and claimed the offices of karnam and shroff as being hereditary. The offices formed portions of a permanently-settled estate of which first defendant was proprietor. The second defendant was alleged to have possession of the offices, the second plaintiff, who had the titular right to them, being thus wrongly kept out. *Held* that it was not necessary that the suit should have been brought for a declaration, there being no doubt as to the second plaintiff's title; and that it was properly brought for possession. Sadasiva Pillai v. Kalappa Mudaliar (1900) . . . . I. L. R., 24 Mad., 39

HEREDITARY OFFICES ACT (BOM. ACT III OF 1874).

See Hindu Law—Adoption—Who may or may not be adopted. [I. L. R., 27 Bom., 75

—ss. 4 and 5—*Vatan—Vatan in Guzerat—Service commutation settlement—Inheritance—Succession to a vatan—Succession through females—Bombay Act III of 1874, s. 5, as amended by ss 1 and 2 of Bombay Act V of 1886—Alienation of vatan.*—A vatan in Guzerat does not cease to be *vatan* property, as defined by s 4 of Bombay Act III of 1874, merely because a service commutation settlement has been effected. Such a settlement does not change the nature of the property simply because service is not demanded. As far as the power of alienation is concerned, if it is granted by the settlement, it cannot be taken away by the change introduced in s. 5 of Bombay Act III of 1874 by s 1 of Bombay Act V of 1886 S 2 of Bombay Act V of 1886 (which amends s 5 of Bombay Act III of 1874) gives a preference to male members of the *vatan* family over persons claiming through females. *Held* that the section applies to *vatans* in Guzerat, even though the services originally appertaining to such *vatans* had ceased to be demanded. One Niamatrai was a *vatandar* in Guzerat. He died in 1844, leaving behind him a widow, a daughter, and a separated brother. His property consisted of certain *pasaita* lands and a cash allowance attached to his *vatan*. In 1868 the Government effected a service

HEREDITARY OFFICES ACT (BOM. ACT III OF 1874)—*concluded.*

[illegible]

sued to establish their title as heirs to the *vatan* property as against the defendants, who were the son's sons of Niamatrai's separated brother. *Held* that, under s 2 of Bombay Act V of 1886, plaintiffs, as claiming through a female, were not entitled to Niamatrai's *vatan* property in preference to the defendants, who were male members of the deceased *vatandar's* family. BAI JADAV *v* NARSILAL (1900) [I. L. R., 25 Bom., 470

—s. 18—*Vatan—Suit for a declaration of right to a share in a vatan, and to participate in the emoluments of the vatan—Jurisdiction of the Civil Court to entertain such suit—Jurisdiction*—Where the plaintiffs sued to obtain a declaration that they were entitled to a third share in a *Mahárki vatan*, and to participate in the profits of the *vatan*: *Held* that, under s 18 of Bombay Act III of 1874, the Civil Court had no jurisdiction to make the declaration sought *Parsha* v. *Lagmya (1888), I L. R, 13 Bom., 83,* followed. BHIVA *v.* VITHYA (1900) . . I. L. R., 25 Bom., 186

HEREDITARY OFFICES (AMENDMENT) ACT (BOM. ACT V OF 1886).

——ss. 1, 2—

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), ss. 4, 5.
[I. L. R., 25 Bom., 470

HIGH COURT.

——power of Coroner to commit to—

See CORONER . 7 C. W. N., 889

——reference to—

See REFERENCE TO HIGH COURT—
CIVIL CASES;
CRIMINAL CASES.

See SMALL CAUSE COURT—PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

——Calcutta—

See RULES OF HIGH COURT, CALCUTTA.

HIGH COURT, JURISDICTION OF.

HIGH COURT, JURISDICTION OF—*continued.*

See APPEAL—NORTH-WESTERN PROVINCES ACTS.
[I. L. R., 25 All., 141

See FIRST OFFENDERS.
[I. L. R., 24 All., 308

See GUARDIAN—APPOINTMENT.
[I. L. R., 25 Bom., 353

See LETTERS OF ADMINISTRATION.
[I. L. R., 24 Mad., 120

See PROBATE—
POWER OF HIGH COURT TO GRANT;
OPPOSITION TO, AND REVOCATION OF, GRANT . 5 C. W. N., 377

See REVISION.

See RIGHT OF SUIT—FRAUD.
[7 C. W. N., 353

See SUPERINTENDENCE OF HIGH COURT.

See TRANSFER OF CIVIL CASE.

See TRANSFER OF CRIMINAL CASE.

See WARRANT OF ARREST—CIVIL CASES.
[I. L. R., 26 Mad., 120

——in Kumaon and Garhwal—

See LEGAL PRACTITIONERS ACT, ss. 6 AND 8.
[I. L. R., 24 All., 348

——to hear appeal—

See MADRAS GENERAL CLAUSES ACT, s. 8.
[I. L. R., 24 Mad., 39

——to inquire into validity of Acts of local Councils—

See BOMBAY CITY IMPROVEMENT ACT.
[I. L. R., 27 Bom., 424

——Calcutta, Criminal—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE.
[I. L. R., 28 Calc., 446

See REFORMATORY SCHOOLS ACT, ss. 8, 16.
[I. L. R., 28 Calc., 423

1. CALCUTTA.

CIVIL.

1.—*Original jurisdiction—High Court—Fraud—Decree—Mofussil Court—Letters Patent, 1865,* [illegible] *of 1882),* [illegible] jurisdic- [illegible] and ss. 11 [illegible] entertain a suit to set aside a decree of a Mofussil Court on the ground of fraud. *Bandon* v. *Becher (1835), 3 Cl. and Fin., 479; Queen* v. *Saddlers Company (1863), 10 H. L. C., 404; Rajib Panda* v. *Lakhan Sendh Mahapatra (1899), I. L. R., 27 Calc., 11, 16; Prasanna Moyi Dasi* v. *Kadambini Dasi (1868),*

HIGH COURT, JURISDICTION OF—*concluded*

1. CALCUTTA—*concluded*

Civil—*concluded*

3 B. L. R. (O. C.), 85, Moxon v. Payne (1873), L. R., 8 Ch. App., 891, referred to. Nistarini Dassi *v.* Nundo Lal Bose (1902)
[I. L. R., 30 Calc., 369

2.—*Jurisdiction—Presidency Group—Bench taking up cases of the Presidency Group, whether it has jurisdiction to set aside decrees of the Presidency Small Cause Court—Presidency Small Cause Courts Act (XV of 1882, as amended by Act I of 1895)—Rules of the Appellate Side of the High Court, Rule II, Chapter III, column 1.* —The Bench taking cases of the Presidency Group has no jurisdiction over the Court of Small Causes at Calcutta, and it has no power to set aside the decrees of the said Court. Shamsher Mundul *v.* Ganendra Narain Mitter (1902)
[I. L. R., 29 Calc., 498

2 MADRAS.

Civil.

[illegible] Act XXIV [illegible]

[illegible] gapatam—*Semble,* that the [illegible] under Rule [illegible]

[I. L. R., 26 Mad., 263

3 BOMBAY.

Criminal.

4.—*Jurisdiction—Scheduled Districts—Reference and appeal in a criminal case from the Scheduled Districts—Act XI of 1846—Scheduled Districts Act (XIV of 1874).*—The Collector of [illegible] Political Agent for the [illegible]

(1897) . . . I. L. R., 25 Bom., 60[illegible]

HIGH COURT, POWER OF—

See Possession, Order of Criminal Court as to—Likelihood of Breach of the Peace. I. L. R., 28 Calc., 416

See Revision.

See Superintendence of High Court.

See Transfer of Civil Case.

See Transer of Criminal Cases.

See Verdict of Jury—Power to interfere with Verdicts.

HIGH COURTS' CHARTER ACT (24 & 25 VICT., c. 104).

——s. 11—

See Warrant of Arrest—Civil Cases.
[I. L. R., 26 Mad., 120

——s. 15—

See Possession, Order of Criminal Court as to—Likelihood of Breach of the Peace. I. L. R., 28 Calc., 416

HINDU LAW.

See Converts . I. L. R., 25 All., 546

——interpretation of—

See Oudh Estates Act (I of 1869).
[5 C. W. N., 602

——reversion of infant to Hinduism—

See Hindu Law—Adoption—Evidence of Adoption.
[I. L. R., 30 Calc., 999

HINDU LAW—ADOPTION.

———

See Administration . 5 C. W. N., 182

See Hindu Law—Will—Construction of Wills—Adoption.

See Limitation Act, 1877, Sch. II—

Art. 118 ; . I. L. R., 25 Bom., 26
„ 27 Bom., 614

Art. 119 ; . I. L. R., 24 All., 195
„ 26 Bom., 720

Arts. 119, 118 and 124.
[I. L. R., 26 Mad., 291

HINDU LAW—ADOPTION—*continued.*

——effect of adoption—

See Hindu Law—Widow—Power of Disposition on Alienation.
[I. L. R., 26 Mad., 143

——who may or may not be adopted—

See Hindu Law—Adoption—Evidence of Adoption. I. L. R., 30 Calc., 899

1. REQUISITES FOR ADOPTION.

Authority.

1.—Consent of sapinda—*Adoption by widow—Consent of sapinda—Exercise of discretion—Effect of representation by widow that her husband had given authority, when none had in fact been given—Effect of asking consent of one of two sapindas of equal degree*—Where a widow obtains the

tion that the adoption was invalid, it was argued that, though the assent of the other *sapinda* had

discharged her duty because, in her opinion, such an application would have been made in vain. The object of enjoining a widow to seek and act under the guidance of her husband's *sapindas* would be

and refusing to give his assent to her adopting a stranger or a distant *sapinda*, if there be no reasonable objection to the adoption of his own son. In

HINDU LAW—ADOPTION—*continued.*

1. REQUISITES FOR ADOPTION—*concluded.*

Authority—*concluded.*

the case of an undivided family, it may be that the assent of the senior *sapinda*, having the status of managing member, will be equivalent to the assent of

sidera-

it has

when

Brah-

[I. L. R., 26 Mad., 627

2.——— *Authority of husband to his wife to adopt—Adoption in pursuance of it—Death of son so adopted—Subsequent adoption by widow with assent of some sapindas—*

Held that the husband's authority was not exhausted by the first adoption, and held good for the second

which was not acted on for nine years, during which period circumstances materially changed, the assent so given would not be valid. Suryanarayana *v.* Venkataramana (1903)

[I. L. R., 26 Mad., 681

3.—Convert—*Gift of a son in adoption by a Hindu convert to Mahomedanism—Validity of*

datta-homa ceremony is necessary. Plaintiff, a

4.—Widow—*Power of widow to give a son in adoption—Authority to give in adoption.*—Accord-

referred to *Bhagirthibai (1877), I. L. R., 2 Bom., 377*, distinguished. Jogesh Chandra Banerjee *v.* Nrityakali Debi (1903)

[I. L. R., 30 Calc., 965; s.c., 7 C. W. N., 871

HINDU LAW—ADOPTION—*continued.*

2. WHO MAY OR MAY NOT ADOPT.

5.—Grandmother—

his own widow to continue the line by means of adoption, the power of the former widow is extinguished and can never afterwards be revived. RAMKRISHNA RAMCHANDRA *v* SHAMRAO YESHWANT (F.B., 1902) . . . . I. L. R., 26 Bom., 526

6.—Mother—*Adoption by a mother succeeding to her son who has been married—Ceremonial*

attained ceremonial competency, by marriage,

ture, marriage or ceremonial competency of her deceased son, but upon the question whether by such adoption she derogates from any other rights save her

had been

Persona designata—Manji, who was a prostitute but not a *naikin*, three days before

HINDU LAW—ADOPTION—*continued.*

2. WHO MAY OR MAY NOT ADOPT—*concluded.*

8.—Sudra leper—*Validity of adoption by a Sudra leper in Bengal—Religious ceremonies, competency to perform*—In Bengal, a Sudra leper may adopt a child. Such an adoption was *held* valid, in the absence of any proof that the disease of the adoptive father was inexpiable or that he was in such a state

leaving a widow, and a son who died in 1889 between fifteen and sixteen years of age and unmarried. In 1891 the widow adopted a son to her husband. *Held* that the adoption was valid. It was contended that the adoption was invalid on the ground that the natural son had survived his father and lived to attain ceremonial competence. Both the Courts below found that he was a minor and unmarried when he died. *Held* that, as there appeared to be no fixed age at which a Hindu boy was supposed to have attained ceremonial competence, and as there was no

3. WHO MAY OR MAY NOT BE ADOPTED.

10.—Only son—*Dwyamushyayana adoption—Power of a Hindu widow to give away an only son*

11.—Stranger to vatandar family—*Vatan—Adoption of a person not a member of the vatandar family—Gordon Settlement—Vatan Act (Bombay Act III of 1874)*—A *sanad* with respect

HINDU LAW—ADOPTION—*continued.*

3. WHO MAY OR MAY NOT BE ADOPTED—*concluded.*

family) who can be legally adopted, will be granted by Government to the *vatan* on the payment from that time forward in perpetuity of an annual *nazrana* of one anna in each rupee of the above total emoluments of the *vatan*." It was contended that the adoption of a person who did not belong to the *vatandar* family, in respect to whose *vatan* the said sanad was granted, was invalid. *Held* that the sanad did not prohibit such an adoption, and that the adoption in question was valid. BALAJI RAMCHANDRA DESHPANDE *v.* DATTO RAMCHANDRA (1902) [I. L. R., 27 Bom., 75

4. EFFECT OF ADOPTION.

12.—Impartible estate—*Rights of natural* ... *to son's* ... was the ... s the last ... l, on his decease, first defendant enjoyed the estate. Plaintiff now sued for a declaration that he was entitled to the estate as reversioner, in preference to a senior brother of the first defendant, basing his claim principally on the ground that he was the natural father of *N* *Held* that this relationship did not entitle plaintiff to claim as reversionary heir In determining the degree of propinquity to the deceased adopted son, in his adoptive family in which the ...

... *Ayyangar*, ... followed As to whether such natural relationship would be efficacious to intercept an escheat to the Crown—*quære.* MUTHAYYA RAJAGOPALA THEVAR *v.* MINAKSHI SUNDARA NACHIAR (1901) [I. L. R., 25 Mad., 394

13.—Successive adoptions—*Hindu widow—Adoption of a second son after death of first, whether it divests the mother's estate—Right of* ...

HINDU LAW—ADOPTION—*concluded.*

4. EFFECT OF ADOPTION—*concluded.*

(1872), 18 W. R., 359; Jamnabai v. *Ray Chand Nahal Chand (1883), I. L. R., 7 Bom, 225;* and *Ravji Vinayakrav Jaggannath Shankarsett* v. *Lakshmibai (1887), I. L. R, 11 Bom, 381,* considered. RAI JATINDRA NATH CHAUDHURI *v.* AMRITA LAL BAGCHI (1900) . 5 C. W. N., 20

5. EVIDENCE OF ADOPTION.

14.—*Adoption, validity of—Son of a Brahmo, adoption of—Onus of proof—Incapacity—Brahmo Samaj—Evidence taken on commission, reference* ...

principles of Hindu law. Evidence taken on commission, until tendered and admitted as evidence in the suit, cannot be made use of by either party. *Nistarini Dassee* v. *Nundo Lall Bose (1899), 3* ...

a member of the Sadharan Brahmo Samaj, *held* ...

HINDU LAW—ALIENATION.

See HINDU LAW—

CUSTOM—PRIMOGENITURE; [6 C. W. N., 879

ENDOWMENT—ALIENATION OF ENDOWED PROPERTY;

JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS;

HINDU LAW—ALIENATION—*continued.*

See HINDU LAW—*concluded.*

MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW ;
[I. L. R., 23 All., 86

REVERSIONERS ;
[I. L. R., 29 Calc., 355

STRIDHAN—POWER TO DISPOSE OF STRIDHAN.
[I. L. R., 24 All., 82

——alienation by widow—

See HINDU LAW—

STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN ;
[I. L. R., 25 All., 476

WILL—CONSTRUCTION OF WILLS ;
[I. L. R., 28 Calc., 499

WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.

1. ALIENATION BY FATHER.

1.—Rights of minor son—*Letters Patent—Transfer of Property Act (IV of 1882), s. 85—Mitakshara—Mortgage—Karta—Decree —Statutes, interpretation of—Notice—Civil Procedure Code (Act XIV of 1882), ss 437, 575—Joinder of parties—Redemption*—In a joint Mitakshara family, consisting of a father and a minor son, the father, as *karta* of the family, by a mortgage bond hypothecated the joint property. The mortgagee sued the father alone, on the mortgage bond, without making the minor son a party, although he (the mortgagee) had notice of the son's interest in the mortgaged property at the time The mortgage-debt was not found to have been contracted for illegal or immoral purposes. *Held* [dissenting from the judgment of GHOSE, J., and affirming that of HARINGTON, J, in *Lala Surja Prosad* v. *Golab Chand (1900), I L R, 27 Calc, 724*] that, the provisions of s 85 of the Transfer of Property Act

HINDU LAW—ALIENATION—*continued.*

1. ALIENATION BY FATHER—*continued*

2.———————*Contract by father to sell ancestral property—Specific performance of such contract—Circumstances justifying sale—Debts of father—Burden of proof of justifying circumstances—Transfer of Property Act (IV of 1882), s. 34*—By a written agreement dated 9th

sell the entirety of the family property so as to pass even his son's interest therein, but in this case there was no evidence of debts that justified the sale It lies on him who seeks to bind the infant to prove justifying circumstances, and this the plaintiff had failed to do. The principle laid down by s. 34 of the Transfer of Property Act (IV of 1882) has no

3.—Rights of son—*Mitakshara—Joint Hindu family—Mortgage by father—Suit for sale*

sued the mortgagees for a declaration that his share was not bound by the decree, first, because he was not made a party to the mortgagee's suit for sale, and, secondly, because the mortgage-debt was contracted by his father for immoral or impious purposes. It was found in that suit that the mortgagees had at least constructive notice of the son's existence, and ought to have made him a party to their suit for sale. But it was also found in the son's suit that the original mortgage-debt of the father was not contracted for immoral or impious purposes. *Held* that, although the son might have been entitled to the decree sought by him, had he contented himself with raising the first plea only, yet, inasmuch as he himself had raised the issue of the immorality of the debt, which had been found against him, and as that was the only issue which could in any subsequent suit be raised as between himself and the mortgagees, he was not in the

HINDU LAW—ALIENATION—*continued.*

1. ALIENATION BY FATHER—*continued*

Singh v. Raja Ram (1882), I. L. R., 4 All., 235, referred to. KANHAIA LAL v. RAJ BAHADUR (1898)
[I. L. R., 24 All., 211

4.—Self-acquired property—*Bequest of self-acquired property by a testator to his sons—Intention expressed by will that property should be*

Validity of alienations—Property having quality

made voluntary gifts of certain property to the defendant after the date of plaintiff's birth. Plaintiff now sued to set these alienations aside, and to recover the property, one ground being that the property

property in question had been self-acquired, originally, by plaintiff's paternal grandfather, who had disposed of it by will to his three sons, of whom plaintiff's father was one. Plaintiff, however, contended that, notwithstanding this fact, the property had the quality of ancestral property in his father's hands. From the terms of the will it appeared that the testator intended his sons to take the property in severalty, but in other respects the dispositions contained in the will were consistent with the ordinary rules of inheritance under the Hindu

HINDU LAW—ALIENATION—*continued.*

1. ALIENATION BY FATHER—*concluded.*

law. There were no words in the will indicating any intention that the sons should hold their shares free from the incidents of ancestral property. *Held* that plaintiff was entitled to recover. NAGALINGAM PILLAI v. RAMACHANDRA TEVAR (1901)
[I. L. R., 24 Mad., 429

2. ALIENATION BY MOTHER.

5.—*Minor—Guardian—Adopted son—Sale by adoptive mother—Suit by son to set aside sale—Purchase money paid by vendee to mother not*

but as the debts of the mother, who claimed adversely to her son NATHU PIRAJI MARWADI v. BALWANTRAO BIN YESHWANTRAO (1903)
[I. L. R., 27 Bom., 390

3. ALIENATION BY WIDOW.

(a) ALIENATION FOR LEGAL NECESSITY, OR WITH CONSENT OF HEIRS OR REVERSIONERS

6.—Consent of reversioner—*Alienation by widow of land inherited from her husband—Reversioner—Consent of reversioner to alienation—Subsequent claim by son of consenting reversioner*

unable to pay the Government assessment. The plaintiff was the son of Venkatesh, and was born after these transactions. After the sale and relinquish-
... died,
... 1897
... rsion-
... ndant,

HINDU LAW—ALIENATION—*continued.*

3. ALIENATION BY WIDOW—*continued*

(a) ALIENATION FOR LEGAL NECESSITY, OR WITH CONSENT OF HEIRS OR REVERSIONERS—*concluded.*

plaintiff's father, who was at the time the only male reversioner in existence, validated the sale. As to the remaining three plots (Nos 497, 498 and 499), the plaintiff was entitled to recover them There was no consent given, or legal necessity for their alienation proved. VINAYAK VITHAL BHANGE *v.* GOVIND VENKATESH KULKARNI (1900)

[I. L. R., 25 Bom., 129

7.——————— *Lease by a widow—Consent of next female reversioner, how far binding on next male reversioner—Ratification*—Where a Hindu widow, with the consent of the next female [illegible]

8.—Duty of alienee—*Alienation for legal necessity—Duty of person advancing money to Hindu widow—Burden of proof*—If a mortgagee [illegible]

BADIYA LAL (1902) . I. L. R., 24 All., 547

(b) WHAT CONSTITUTES LEGAL NECESSITY.

9.—*Legal necessity—Mortgage by widow—Loan, raising of.*—A Hindu widow, with other persons, was interested in an estate as the representative of her deceased husband. In order to meet the expenses incidental to the defence of criminal proceedings brought by a tenant alleging that his landlords had forged a *kabuliyat*, the lady, with her co-sharers, raised a loan on a promissory note. Her property was sold in execution of a decree for the money. In order to have the sale set aside, she exe- [illegible]

HINDU LAW—ALIENATION—*concluded.*

3. ALIENATION BY WIDOW—*concluded.*

(b) WHAT CONSTITUTES LEGAL NECESSITY—*concluded.*

necessity NOBIN CHANDRA CHAUDHURI *v.* KHERODE NATH SUR (1902) . . . 6 C. W. N., 648

(c) SETTING ASIDE ALIENATIONS, AND WASTE.

10.—Reversioners—*Specific Relief Act (I of 1877), s 42—Suit to set aside a mortgage—Reversionary heirs—Dispute as to nearer heir—Mortgage for a small amount which might be repaid by widow—Maintainability of suit—Declaration in a dismissed suit.*—Where a Hindu widow mort- [illegible]

nearer reversionary heirs are, is premature, and is not maintainable. A Civil Court has ample discretion, under s. 42 of the Specific Relief Act, to exercise jurisdiction vested in it, and to decline to set aside, [illegible]

11.——————— *Sale by widow of deceased* [illegible]

(1903) . . . I. L. R., 25 All., 550

HINDU LAW—CONTRACT.

1. PROMISSORY NOTE.

—*Suit on promissory note executed by mother of a minor, as his guardian, in respect of a debt for which the minor's share in the ancestral estate was liable—Liability of minor to the extent of his share in the ancestral estate*—The mother of a minor executed, as his guardian, a promissory note in respect of a debt for which the son's share in the ancestral estate was liable at the time. On a suit being brought against the minor on the note: *held* that the defendant was liable on the note, to the

HINDU LAW—CONTRACT—*concluded.*

1. PROMISSORY NOTE—*concluded.*

extent of his share in the ancestral estate. *Bachubai* v. *Shamji Jadowji, I. L. R., 9 Bom., 551,* and *Indur Chunder Singh* v. *Radhakishore Ghose, I. L. R., 19 Calc., 507,* distinguished. SUBRAMANIA AYYAR *v.* ARUMUGA CHETTY (1902)
[I. L. R., 26 Mad., 330

2. TRANSFER OF PROPERTY.

See LEASE—CONSTRUCTION.
[I. L. R., 28 Calc., 720

HINDU LAW—CUSTOM.

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT
[I. L. R., 27 Bom., 492

See also THE PARTICULAR HEAD OF HINDU LAW WHICH IS APPLICABLE.

See MALABAR LAW—CUSTOM.

——inheritance and succession—

See LETTERS OF ADMINISTRATION.
[I. L. R., 28 Calc., 608

1. IMPARTIBILITY.

1.—*Impartible Raj—Custom—Onus of proof—Raj seized by Government—Subsequent re-grant* [illegible] *to heir of* [illegible] *females.*— [illegible] partible Raj [illegible] out of the country for acts of rebellion, and placed it under the management of their officers Subsequently they effected a division of the Raj estate, re-instating in one portion of it the heir of the former holder, and granting the other portion to members of another branch of the same family *Held* that the re-instatement must, under the circumstances, be treated as proceeding from the grace and favour of the Government in the exercise of their sovereign authority, and the portion restored became thenceforth the separate self-acquired property of the heir, though with all the incidents of the family tenure of the old estate as an impartible Raj *Beer Pertab Sahee* v. *Rajender Pertab Sahee (1867), Moore's I. A., 1,* followed. There is no inconsistency between a custom of impartibility and the right of females to inherit; and the general law must prevail, unless it is proved that the custom extends to the exclusion of females The onus of proving

HINDU LAW—CUSTOM—*continued.*

1. IMPARTIBILITY—*concluded.*

that they are excluded lies on the party alleging it. RAM NUNDUN SINGH *v.* JANKI KOER (1902)
[I. L. R., 29 Calc., 828:
s.c., 7 C. W. N., 57;
L. R., 29 I. A., 178

2. INHERITANCE AND SUCCESSION.

2.—*Mitakshara and Mayukha Schools of Hindu law—Proof of family custom at variance with Hindu Law—Governing law of migrating* [illegible]

without reference to their nearness to the common ancestor, was held by the Judicial Committee not to be proved by four instances of the custom of [illegible]

3. PRIMOGENITURE.

3.—Mitakshara family—*Debt of father—Liability of son.*—Where the right of primogeniture exists in a *Mitakshara* family, the son who takes the estate by descent by virtue of that right does not [illegible]

Rao Bahadur v. *Court of Wards* and *Venkata Kumari Mahipati Surya Rao (1899), 3 C. W. N., 415,* followed. RAM DAS MARWARI *v.* TEKAIT BRAJA BEHARI SINGH (1902) . . 6 C. W. N., 879

4.—Proof of custom—*Lineal primogeniture* [illegible]

by the High Court :—(*a*) oral evidence to show that it was well understood in the family and in families belonging to the same group that no descendant of a younger branch could take until all the elder [illegible]

succession was lineal primogeniture, and which, [illegible] present [illegible] among [illegible] ed in [illegible] that [illegible] se in [illegible] er of seniority with titles denoting precedence, which

HINDU LAW—CUSTOM—*concluded.*

3 PRIMOGENITURE—*concluded.*

would naturally be attached to the lines of descent traced from them *Held* that the custom was proved. MOHESH CHUNDER DHAL *v* SATRUGHAN DHAL (1901-1902) . I. L. R., 29 Calc., 343: [s.c., 6 C. W. N., 459; L. R., 29 I. A., 62

HINDU LAW—DEBTS.

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR [I. L. R., 26 Mad., 686

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES. [6 C. W. N., 223

See HINDU LAW—

ALIENATION;

CUSTOM—PRIMOGENITURE; [6 C. W. N., 879

JOINT FAMILY—

DEBTS AND JOINT FAMILY BUSINESS;

POWERS OF ALIENATION BY MEMBERS—MANAGER. [6 C. W. N., 429

See INSOLVENT ACT, ss 7 AND 30. [I. L. R., 26 Mad., 214

See REPRESENTATIVE OF DECEASED PERSON.

1.—Liability for debts—*Widow carrying on business of husband—Death of widow—Liability of reversioners to trade debts properly incurred.* —Trade debts properly incurred by a Hindu widow, on the credit of the assets of the business to which she has succeeded as the heiress of her deceased husband, are recoverable, after her death, out of the assets of the business, as against the reversioners who have succeeded thereto, even in the absence of a specific charge. SAKRABHAI NATHUBHAI *v* MAGANLAL MULCHAND (1901) . I. L. R., 26 Bom., 206

2. ———— *Mitakshara joint family*

[s.c, I. L. R, 29 Calc., 583

HINDU LAW—ENDOWMENT.

See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES [I. L. R., 26 Mad., 79

See ENDOWMENT . I L R., 26 Mad., 31

See LIMITATION ACT, 1877, SCH. II, ARTS 120 AND 144 . I. L. R, 26 Mad., 113

See MALABAR LAW—ENDOWMENT.

——alienation of endowed property—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—OFFERINGS TO HINDU DEITY. [I. L. R., 28 Calc, 470

1. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT.

1.—*Shebait, suit by, for recovery of advances*

idols and dedicated certain properties for their worship, etc, and prescribed a certain order in which his descendants were to become *shebaits* When the office of *shebait* devolved upon plaintiff's father *B*, he was kept out of possession by defendant *P* of a portion of the *debutter* estate; and, in a suit by *B* against *P* and certain other persons, *B* having died during the pendency of the suit, a decree was passed, declaring the properties in dispute to be *debutter*, declaring that *B* was entitled to be *shebait*. *B* had to advance money out of his own estate to meet the expenses of the *debutter* estate. The plaintiffs brought the present suit, as heirs and legal representatives of *B*, for recovery of the said money, as also for money realised by *P* out of the *debutter* estate The plaint stated that, as it was not certain who amongst the defendants was entitled to be *shebait*, all of them were made parties, but the Court was not asked to determine who was entitled to be *shebait* *Held* that the plaintiffs, as creditors

HINDU LAW—ENDOWMENT—*continued*.

1. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—*concluded*.

was entitled to represent the estate as *shebait*, and the plaintiffs had not asked for the determination of the question as to who was the *shebait* for the time being. PEARY MOHAN MUKHERJEE *v.* NARENDRA KRISHNA MUKERJEE (1900) . . . 5 C. W. N., 273

2 SUCCESSION IN MANAGEMENT.

2.—Succession to Managership—*Chela, right of, to succeed ascetic or sanyasi*—

Gir v. *Umroo Gir (1807), 1 S D. A., 291, Mahanth Rammoy Dass* v *Mahanth Debraj Dass, 6 S. D. A., 262; Mohunt Sheo Prokash Doss* v.

succession to the trust by an act of his own, in connexion with the status under which he originally acquired the trust. *Mohunt Rumun Dass* v. *Mohunt Ashbul Dass (1864), 1 W. R., 160,* and *Rup Narain Singh* v *Junko Bye (1878), 3 C. L R, 112,* referred to. One *J*, who was the *mahanth* of a religious institution known as the Barhampore ... avas of the ... d been his ... f *mahanth-* ... him as his ... *hanthship,* executed an *ekrarnama* in favour of the *mahanth* of Mirzapur, giving him the right of naming or appointing his own successor. *Held* that the mode of

... C. W. N., ...

3 ALIENATION OF ENDOWED PROPERTY.

3.—Power of alienation—*Shebait - Suit to set aside execution sale—Right of suit—Civil Procedure Code (Act XIV of 1882), s. 244—Necessity, absolute and legal—" Bhog."*—Plaintiff, who was the *shebait* of an idol, borrowed in his personal capacity a certain sum of money from defendant It was recited in the bond, and found by the Courts below, that the money was required to pay a personal debt, and for supplying the idol with *bhog* Defendant, having obtained a money-

HINDU LAW—ENDOWMENT—*concluded*.

3. ALIENATION OF ENDOWED PROPERTY—*concluded*.

decree, sold in execution thereof the *debutter* property. Plaintiff, in his capacity of *shebait*, brought the present suit to set aside the sale. *Held* by MACLEAN, *C.J.* (agreeing with RAMPINI, *J.*), that the trust property could not be sold in execution in the previous suit, as the decree was against the present plaintiff personally. *Also* that s. 244 of the Civil Procedure Code was no bar to the present suit, inasmuch as it was brought by the *shebait* to set

MAHAPATRA *v.* MOHUNT PADMA CHARAN DEB GOSWAMI (1902) . . . 6 C. W. N., 663

4.———————*Endowed property —Powers of alienation possessed by manager of endowed property*—*Held* that, with the exception of cases which come under the operation of Bombay Act II of 1863, there is no absolute prohibition against the alienation of endowed property by the manager for the time being; but, for the necessary

HINDU LAW—GIFT.

See HINDU LAW—

JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY; [6 C. W. N., 651

MAINTENANCE—RIGHT TO MAINTENANCE—CONCUBINE; [I. L. R., 26 Bom., 163

WILL—CONSTRUCTION OF WILLS.

HINDU LAW—GIFT—*continued.*

—construction of gifts; additions to ornaments, made subsequent to marriage—

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES

[I. L. R., 28 Calc., 311

1 REQUISITES FOR GIFT

1.—*Act IV of 1882 (Transfer of Property Act), s 123—Gift—Transfer of possession not necessary when gift of immoveable property registered—Act I of 1872 (Indian Evidence Act), s 111—Gift to an agent—Undue influence—Mental capacity of donor.*—*Held* that, assuming that delivery of possession was essential under the Hindu law to complete a gift of immoveable property, that law has been abrogated, by s 123 of the Transfer of Property Act, in cases where the instrument of gift has to be registered. *Dharmodas Das* v. *Nistarini Dasi (1887), I. L. R., 14 Calc., 446,* followed *Held, also,* that there is nothing to prevent an agent from being the object of the bounty of his principal If an agent can clearly show that a gift was made in his favour, by a donor who was in a position to exercise a free and unfettered judgment with full knowledge of what he was doing, the gift will be upheld. PHUL CHAND *v.* LAKKHU (1903) . . . . I. L. R., 25 All., 358

2 POWER TO MAKE AND ACCEPT GIFTS

2.—*Donor not in possession—Donee not placed in possession—Gift of an undivided share—*

was kept joint and was applied to the maintenance of their mother during her lifetime It remained in the possession of the plaintiff's father, who was the eldest of the family The mother died in 1877,

as already stated, in possession, and they did not deliver possession of their shares to the plaintiff or to anyone on his behalf. The plaintiff's father (their co-sharer) was in possession, and he continued in possession after the gift was made. The plaintiff was at that time, and until 1892, a minor, and lived

chased by one Kirpashankar Ranchhor. In 1892 the plaintiff attained his majority, and on the 2nd January, 1899, he filed this suit against his father

HINDU LAW—GIFT—*continued.*

2. POWER TO MAKE AND ACCEPT GIFTS— *concluded.*

rejected the plaintiff's claim on the ground that the gift to the plaintiff by *M* and *J* of their undivided shares of land not in their possession, and of which

adverse possession since the 1st January, 1887, *i.e.,* more than twelve years. On appeal to the High

necessary, and by the registered deed of gift had done all that they could do, and the possession of the father was practically the only mode in which the plaintiff, who was then an infant, could accept or exercise possession: the donors never objected, and made no attempt to revoke their gift: no division was necessary, as the whole of the land was in the possession of the plaintiff's father. (2) The fact that the shares were undivided did not render the gift invalid: this was not a gift by members of an

was

f an

pre-

ntiff,

a member of another coparcenary: no consent was necessary to validate the alienation, nor was there anyone who did or could object (3) The plaintiff's claim was not barred by limitation: the property did not pass to the mortgagee until the 1st January, 1887, and this suit, instituted on the 3rd January, 1899, allowance being made for the vacation, was therefore in time. (4) The auction-purchaser was not a necessary party. the plaintiff was not bound to sue every possible claimant to the land: if he chose to leave the question that might arise between him and the auction-purchaser to future settlement, he did it at his own risk: he was *dominus litis* JOITARAM RAMKRISHNA *v.* RAMKRISHNA NANDLAL (1902)

[I. L. R., 27 Bom., 31

3 CONSTRUCTION OF GIFTS.

3.—Gift to donees jointly.—Where property is given jointly to two persons living as members

4.—Gift to idol—*Will, construction of—Idol not in existence at the time of the testator's death—Direction to executors to establish thakur—Gift to a class*—The rule laid down in the case of *Tagore* v. *Tagore (1872), 9 B. L. R., 377,* that the donee of a

HINDU LAW—GIFT—*concluded*

3. CONSTRUCTION OF GIFTS—*concluded*.

Chunder Boral (1898), I. L. R., 25 Calc., 405, followed. That which cannot be done directly by

place as the executor should think fit is a valid direction. A bequest in a will "to such of my grandsons as shall be alive at the death of my daughter, in equal shares, for and during their respective lives," if more than one, or "to such grandson alone for life," if there be only one, is invalid. Where a

takes effect, if it was antecedently possible that they

HINDU LAW—GUARDIAN.

See GUARDIAN

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—MANAGER.
[I. L. R., 25 All., 407

of his ward, the lender is bound to ascertain whether the guardian is acting for the benefit of the minor. It is only, however, when there has been at the time of the loan due inquiry as to the necessity for it, that the lender can obtain a charge over the minor's property. DALIBAI *v.* GOPIBAI (1902)
[I. L. R., 26 Bom. 433

HINDU LAW—HUSBAND AND WIFE.

See REPRESENTATIVE OF DECEASED PERSON . . **I. L. R., 25 Mad., 385**

1.—Conjugal rights—*Wife—Conjugal rights, suit for enforcement of—Residence of wife at her parental house—Agreement contrary to Hindu law and opposed to public policy—Conditions imposed by decree on husband—Bengal, North-Western Provinces and Assam Civil Courts Act (XII of 1887), s. 37, cl. (1)—Contract Act (IX of 1872), s. 23.*—The duty imposed upon a Hindu wife to reside with her husband, wherever he may choose to reside, is a rule of Hindu law and not merely a moral duty. An ante-nuptial agreement on the part of the husband, that he will never be at liberty to remove his wife from her parental abode, would defeat that rule of Hindu law, and is invalid on that ground, as well as on the ground that it is opposed to public policy. TEKAIT MON MOHINI JEMADAI *v.* BASANTA KUMAR SINGH (1901)
[I. L. R., 28 Calc., 751; s.c., 5 C. W. N., 673

2.—Guardianship—*Rights of husband as legal guardian of wife—Custom for wife to remain in custody of parents until maturity*.—Though a husband is the legal guardian of his wife from the moment of his marriage with her, he is, by the general custom prevailing among the Hindu community in the Madras Presidency, not entitled to the actual custody of his wife until she attains maturity, unless such custody should be necessary in the interests of the girl. ARUMUGA MUDALI *v.* VIRARAGHAVA MUDALI (1900)
[I. L. R., 24 Mad., 255

HINDU LAW—INHERITANCE.

HINDU LAW—INHERITANCE—*continued.*

See Hindu Law—

Adoption—Effect of Adoption; Custom—Inheritance and Succession;

Stridhan—

Description and Devolution of Stridhan; [I. L. R., 24 All., 67
I. L. R., 25 All., 468, 476

Effect of Unchastity. [I. L. R., 30 Calc., 521

——children by different wives—

See Oudh Estates Act (I of 1869). [5 C. W. N., 602

——impartible property—

See Hindu Law—Custom—Primogeniture . . I. L. R., 29 Calc., 343

——religious persons (ascetics)—

See Letters of Administration. [I. L. R., 28 Calc., 608

1. SPECIAL LAWS.

Saraogis.

1.—*Custom—Saraogis—Alleged custom of exclusion of daughters from inheritance to their fathers, set up but not proved—Semble* that no custom exists in the North-Western Provinces of India

2. MIGRATING FAMILIES.

2.—*Presumption as to law governing family*

HINDU LAW—INHERITANCE—*continued.*

2 MIGRATING FAMILIES—*concluded.*

mentary evidence pointing to the same conclusion. *Held, further,* that, the succession being governed by the *Mitakshara* law, the brother and not the

Chunder Dhabal (1902)
[I. L. R., 29 Calc., 433; s.c., 6 C. W. N., 490; L. R., 29 I. A., 82

3. GENERAL RULES AS TO SUCCESSION.

3.—*Dayabhaga—Consanguinity—Spiritual benefit.*—Under the Bengal School of Hindu law, inheritance depends on consanguinity so far as the near relatives are concerned, but in the case of remoter relations the law falls back on the principle of spiritual benefit Nogendra Nandini Dassi *v.* Benoy Krishna Deb (1902)
[I. L. R., 30 Calc., 521; s.c., 7 C. W. N., 121

4 GENERAL HEIRS

Sapindas.

4.—*Mitakshara—Succession—Question of priority between the son of the paternal uncle of the*

5 SPECIAL HEIRS

(a) Males.

5.—Brother's grandson—*Brother's grandson preferred to widow of a daughter's son.*—The widow of a daughter's son is not entitled to succeed

HINDU LAW—INHERITANCE—*continued.*

5. SPECIAL HEIRS—*concluded.*

(*a*) MALES—*concluded.*

6.—Husband, heirs of—*Dayabhaga—Heir—*

subsequent to marriage should be treated as part of the nuptial presents.—According to the Bengal School of Hindu Law, the brother is the preferential heir to the husband to movable property obtained, from her father after her marriage, by a woman who has died childless. *Judoo Nath Sircar* v. *Bussunt*

7.—Uncle—*Succession—Paternal aunt—Pater-*

(*b*) FEMALES

10.—Widow—*Re-marriage—Succession to a son of first marriage, notwithstanding re-marriage—Hindu Widow's Re-marriage Act (XV of 1856), ss. 2 and 5*.—The widow of a Hindu married a second time. Subsequently to her re-marriage, her son by her first marriage died childless *Held* that she was entitled to succeed to his property, notwithstanding her re-marriage. CHAMAR HARU DALMEL *v.* KASHI (1902) . I. L. R., 26 Bom., 388

6 ILLEGITIMATE CHILDREN.

11.—Sudras—*Illegitimate son—Mitakshara law—Suit for partition by illegitimate son—Dasiputra—Right of illegitimate sons among Sudras—*

HINDU LAW—INHERITANCE—*continued.*

6 ILLEGITIMATE CHILDREN—*concluded.*

Position of a son by a female slave.—Under the *Mitakshara* School of Hindu law, an illegitimate son of a Sudra, not born of a female slave, cannot claim a share in the family property, where his putative father has already parted with his interest

Kirpal Narain

. *R.*, 19 *Calc.*,

Gain (1875), *I. L. R*, *1 Calc*, *1*, referred to. *Jogendro Bhupati Hurrochundra* v. *Nityanand Man Singh (1890)*, *I. L. R*, *18 Calc*, *151*, distinguished. *Semble.*—Under the *Mitakshara* law, an illegitimate son of a Sudra, by a female slave, does not occupy the same position as a son lawfully begotten. He does not at his birth acquire a joint interest with his father in the ancestral family property. It is only after the father's death that he may claim a share in the family property, and during his father's lifetime he may take a share by his father's choice:

brother against the grandsons for property of the deceased divided brother.—Plaintiff and *R* were divided brothers in a family of Sudras. *R* kept a permanent concubine, by whom he had two illegitimate sons. Both of these sons predeceased *R*, leaving legitimate sons of their own them surviving. *R* then died. Plaintiff now sued, claiming to be his heir, to recover his property, which was in the possession of *R*'s grandsons *Held* that plaintiff was not entitled to recover. Whether an illegitimate son of an illegitimate son could, on the principle of *jus representationis*, represent the illegitimate son if, before the inheritance opened, the latter predeceased his father—*quære*. RAMALINGA MUPPAN *v.* PAVADAI GOUNDAN (1901) [I. L. R., 25 Mad., 519

7 IMPARTIBLE PROPERTY.

13.—*Devolution of impartible property—Right*

—Under the law of *Mitakshara*, when impartible property passes by survivorship from one line to another, it devolves, not necessarily on the co-parcener nearest in blood, but on the nearest co-parcener of the senior line. The holder of an impartible *zamindari* had three wives. By the first he left no issue: by the second he had issue *M*, *R* and *P*, by the third he had issue *V*. Upon the death of the *zamindar*, he was succeeded, first by *M*, then by *M*'s son, and then by *R*, who held the estate for many years. When *R* died, possession of the estate was taken by the

HINDU LAW—INHERITANCE—*continued.*

7. IMPARTIBLE PROPERTY—*continued.*

grandson of his whole brother *P*, whereupon *V*'s son claimed it, contending that he stood in a nearer class of heirs. *Held* that the grandson of *P* was the nearest co-parcener of the senior line, and was entitled in preference to *V*'s son, who belonged to the junior line. *Naraganti Achammagaru* v *Venkatachalapati Nayanivaru, I. L. R., 4 Mad.*, 250, followed. *Subramanya Pandya Chokka Talavar* v *Siva Subramanya Pillai, I. L. R., 17 Mad.*, 316, referred to. The question as to *onus* of proof of partibility considered. An estate had been held, [illegible]

[illegible]

of the country, leaving a younger brother of the [illegible]

[illegible]

a temporary measure, the *palayagar* was granted an [illegible]

[illegible]

the *palayagar*, but the arrangement was again varied, the *palayagar* receiving ten per cent of the gross collections In 1817, instructions were issued to the effect that villages should be given over to the *palayagar* of a value equal to the average gross amount of his then income, from whatever source [illegible]

[illegible]

dants from the family of the grantee by his third

HINDU LAW—INHERITANCE—*continued.*

7. IMPARTIBLE PROPERTY—*concluded.*

wife. Plaintiff now sued for partition, when the [illegible]

[illegible]

GAPPA KALAKKA THOLA UDAYAR *v* KACHI KALYANA RANGAPPA KALAKKA THOLA UDAYAR (1901)

[I. L. R., 24 Mad., 562

8 JOINT PROPERTY AND SURVIVORSHIP.

14.—Gift to donees jointly—*Death of donee—Survivorship—Joint tenancy—Tenancy in common.*—Where property is given jointly to two *persons living as members of a joint Hindu family*, each donee takes an interest in the property which passes to his heirs at his death, and not to the other donee by survivorship. Two brothers, living in union as a joint Hindu family, were jointly given certain property. One of them died childless, leaving a widow. *Held* that the widow was entitled to a moiety of the property as heir of her husband, and that it did not pass to the other brother by survivorship BAI DIWALI *v* PATEL BECHARDAS (1902) . . . **I. L. R., 26 Bom., 445**

15.—Grandsons—*Two grandsons through the same daughter take estate as joint ancestral estate*—*Held* that, under the *Mitakshara* law, the two sons of a Hindu's only daughter succeed on their mother's death to his estate jointly, with benefit of survivorship, as being joint ancestral estate *Jasoda Koer* v. *Sheo Pershad Singh (1889), I L R, 17 Calc*, 33, and *Saminadha Pillai* v. *Thangathanni (1895), I L R, 19 Mad*, 70, overruled. VENKAYYAMMA GARU *v* VENKATARAMANAYYAMMA (1902) . . **L. R., 29 I. A., 156**;

[s.c., I. L. R., 25 Mad., 678; 7 C. W. N., 1

9 RELIGIOUS PERSONS.

16.—*Succession*—*Religious institution*—*Custom* [illegible]

[illegible]

Pillai (1893), I. L R, 16 Mad, 490, referred to. RAMJI DASS *v* LACHHU DASS (1902)

[7 C. W. N., 145

10 DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

17.—Lameness—*Exclusion from inheritance—Lameness of a member of an undivided family—Effect on right of inheritance*—Lameness which is not congenital is no bar to the right of inheritance which a member of an undivided Hindu family ordin-

HINDU LAW—INHERITANCE—*concluded.*

10. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—*concluded.*

arily possesses. Whether lameness which is congenital would be a bar—*quære.* VENKATA SUBBA RAO *v.* PURUSHOTTAM (1902) [I. L. R., 26 Mad., 133

18.—**Unchastity**—*Degradation of daughter on account of incontinence—Effect on her right to inherit the stridhanam property of her mother.*—Under the Hindu law, the degradation of a daughter on account of incontinence does not put an end to [illegible]

HINDU LAW—JOINT FAMILY.

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

See HINDU LAW—

ALIENATION—ALIENATION BY FATHER,

DEBTS; . 6 C. W. N., 370

PARTITION—

REQUISITES FOR PARTITION; [I. L. R., 30 Calc., 231

RIGHT TO PARTITION—GRANDSON; . 7 C. W. N., 688

EFFECT OF PARTITION. [I. L. R., 24 All., 48

See INSOLVENT ACT, SS. 7 AND 30. [I. L. R., 26 Mad., 214

See LETTERS OF ADMINISTRATION [I. L. R., 27 Bom., 140

See LIMITATION ACT, 1877, SCH. II, ART. 64 . . I. L. R., 25 All., 67

See MALABAR LAW—JOINT FAMILY.

HINDU LAW—JOINT FAMILY—*continued.*

See MINOR—REPRESENTATION OF MINORS IN SUITS . I. L. R., 23 All., 459

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION. [I. L. R., 25 Bom.;

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS. I. L. R., 27 Bom., 157

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION. [6 C. W. N., 841

See SALE IN EXECUTION OF DECREE—

JOINT PROPERTY;

DISTRIBUTION OF SALE-PEROCEEDS. [I. L. R., 23 All., 106

——debts, and joint family business—

See HINDU LAW—PARTITION—EFFECT OF PARTITION. [I. L. R., 24 Mad., 555

See LIMITATION ACT, 1877, S. 19—ACKNOWLEDGMENT OF DEBTS. [I. L. R., 25 Mad., 220

——nature of joint family, and position of manager—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT I. L. R., 26 Mad., 544

See PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION . . I. L. R., 28 Calc., 769

——powers of alienation by members—

See HINDU LAW—ALIENATION—ALIENATION BY FATHER

——power of manager—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION [I. L. R., 27 Bom., 287

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

(*a*) GENERALLY.

1.—*Self-acquisition—Partition—Burden of proof—Findings of fact—Findings based upon presumptions only—Second appeal—Practice.*—In a suit for partition, brought in 1898, the plaintiffs claimed a share in the income of a certain *inam* village which had been purchased by the defendant in 1873. The defendant pleaded (*a*) that it was his self-acquired property, and (*b*) limitation. The Court of first instance rejected the claim, but in appeal the Judge held that the burden of proving self-acquisition and exclusive enjoyment lay upon the defendant, and that, in the absence of such proof,

HINDU LAW—JOINT FAMILY—*continued.*

1 PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*concluded.*

(*a*) GENERALLY—*concluded*

the presumption was in favour of the plaintiffs. He therefore reversed the decree and awarded the plaintiffs' claim. On appeal to the High Court: *held* (reversing the decree, and remanding the case for re-trial) that the burden of proof lay on the plaintiffs. It was for them to show that the purchase had been made out of ancestral funds, and they were also bound to prove that they had been in receipt of their share of the income. That burden could not be shifted on to the defendant, who acquired the property and in whose name and possession it had admittedly been for years. VINAYAK NARSINVH v. DATTO GOVIND (1900)

[I. L. R., 25 Bom., 367

(*b*) EVIDENCE OF SEPARATION.

2.—*Mitakshara—Partition* —The disruption of a joint family cannot be effected by an order of Court against the intention of the parties, unless it is followed by an actual conversion of the joint tenancy into a tenancy in common, or by an actual partition by metes and bounds. MUDIT NARAYAN SINGH v BANGLAL SINGH (1902) . I. L. R., 29 Calc., 797

2 NATURE OF, AND INTEREST IN, PROPERTY.

3.—*Mitakshara family—Deed executed by a member—Self-acquired property—Right of suit* — The members of a *Mitakshara* family are all joint tenants of the undivided property in which no member has any defined share; and the property passes, on the death of any member, to the survivors

PRASAD (1901) . . 6 C. W. N., 651

3 NATURE OF JOINT FAMILY

4.—*Mitakshara doctrine of joint family property—Limitation Act (XV of 1877), Sch II, Art 106—Partnership—Contract Act (IX of 1872), ss. 239, 253* —V and his five sons constituted an undivided Hindu family V and his three elder sons lived apart from the two youngest sons, and were in possession of some ancestral property. The two youngest s ns were plaintiff and first defendant, respectively, in this suit. Plaintiff sued this brother for an account, and for partition of certain property which he alleged to be the property of a

HINDU LAW—JOINT FAMILY—*continued.*

3. NATURE OF JOINT FAMILY—*concluded.*

189, distinguished *Per* BHASHYAM AYYANGAR, J.—It was impossible to regard plaintiff and first defendant as forming in themselves an undivided family owning joint family property as a corporate body. *Sham Narain* v. *Court of Wards, 20 W. R., C. R., 197*, commented on. The origin and nature of the *Mitakshara* doctrine of joint family property discussed. *Peddayya* v. *Ramalingam, I. L R, 11 Mad., 406*, referred to *Radha Churn Dass* v *Kripa Sindhu Dass, I L. R, 5 Calc, 474*, considered. *Rampershad Tewarry* v. *Sheochurn Dass, 10 M. I. A, 490*, distinguished SUDARSANAM MAISTRI v. NARASIMHULU MAISTRI (1901)

[I. L. R., 25 Mad., 149

4 DEBTS, AND JOINT FAMILY BUSINESS.

5—**Debt incurred by senior member of family**—*Mortgage of family property by senior member—Decree against mortgagor—Purchase under that decree—Suit for partition of property among the co-parceners—Recognition of debt as binding on co-parceners—Suit by purchaser for possession—Evidence of award in partition insufficient as showing necessity for original mortgage* —An undivided Hindu family consisted of *A*, his three sons, and his nephew *A* mortgaged family land while the nephew was a minor The mortgagee filed a suit and obtained a decree on the mortgage, in execution of which the land was put up for sale and purchased by plaintiff The nephew was not made a party to that suit *A* died, whereupon the nephew instituted a suit for partition against *A*'s sons. plaintiff was not a party to that suit. The matters in dispute therein were referred to

cover the land so awarded to the nephew, but adduced

[I. L. R., 26 Mad., 28

HINDU LAW—JOINT FAMILY— *continued.*

4. DEBTS, AND JOINT FAMILY BUSINESS—*continued*

6.—Document executed by eldest brother on understanding that all would join—*Proposed agreement with all members of Hindu family—Agreement not perfected—Execution of document by eldest brother upon under-*

brothers having refused to execute it when asked to

separately named each of the three brothers as parties; they were not described as being undivided, and the eldest was described as only representing his son. *Held* that the document constituted merely a proposed agreement which had never been per-

reason that the person who had alone executed it

7.—Liability of sons for father's debts—*Joint Hindu family—Liability of sons to pay their father's debts—Limitation—Act XV of 1877 (Indian Limitation Act), Sch II, Art. 120*—The father of a joint Hindu family executed, on the 23rd June, 1893, a simple money bond, payable on the 18th June, 1894. The money not being paid on due date, the creditor sued the father alone, and obtained a decree against him on the 17th June,

payable, and (2) that the suit was one to which Art. 120 of the second Schedule to the Indian Limitation Act, 1877, applied, and was therefore not barred by limitation. *Badri Prasad* v. *Madan Lal (1893), I L R., 15 All, 75*, followed. *Malle-*

HINDU LAW—JOINT FAMILY— *continued.*

4. DEBTS, AND JOINT FAMILY BUSINESS—*concluded.*

8.—Loan taken by Manager—*Whether other members liable.*—The *karta* of a joint family governed by the *Dayabhaga* law executed a note of hand, and it was alleged by the plaintiff that the money was borrowed by him for the purpose of carrying on a trade in his name, but that the income was spent for the benefit of the joint family. The

that the view taken by the Judge was erroneous, and that the proposition may be true as regards the sons in a *Mitakshara* family as to debts contracted *by the father, but not as regards other members. Also* that, in order to make the brother of the maker

5. POWERS OF ALIENATION BY MEMBERS.

MANAGER.

9.—Allegation of managership—*Contract for sale of land by one of three brothers—Allegation in plaint that vendor was managing member—No allegation of authority or ratification by others—Suit for specific performance against all—Cause of action*—A plaint alleged that first defendant, as managing member of an undivided family consisting of the three defendants, had entered into a contract to convey certain land to plaintiff, and had placed him in possession thereof, after receiving a sum of money in part payment There was no allegation that the other defendants were parties to the contract, or that they had authorized the first defendant to enter into it, or that they had ratified it The plaint claimed specific performance of the contract as against all the defendants. *Held* that it disclosed

against first defendant, without determining whether the sale by him would or would not bind the interests of the other defendants in the property KOSURI RAMARAJU *v.* IVALURY RAMALINGAM (1902)

[I. L. R., 26 Mad., 74

HINDU LAW—JOINT FAMILY—*continued.*

5. POWERS OF ALIENATION BY MEMBERS—*continued.*

MANAGER—*continued.*

10.—**Minority**—*Joint Hindu family—Mitakshara—Appointment of guardian of member of family—Liability of members on mortgages executed by karta*—A guardian of the property of an infant cannot properly be appointed in respect of the infant's interest in the property of an undivided

far as they were found to have been made for the benefit of the family and for legal necessity, be

family to a money decree for advances as to which necessity had not been established GHARIB-ULLAH *v.* KHALAK SINGH (1903) . **I. L. R., 25 All., 407; [s.c., L. R., 30 I. A., 165; 7 C. W. N., 681**

11.—**Power of manager**—*Karta, power of, to pledge family credit—Ancestral business*—A *karta* of a Hindu joint family possessing an ancestral business has an implied power to pledge the credit

12.—**Younger member as manager**—

HINDU LAW—JOINT FAMILY—*concluded.*

5. POWERS OF ALIENATION BY MEMBERS—*concluded.*

MANAGER—*concluded.*

family to alienate or otherwise deal with immovable

6. SUITS FOR POSSESSION.

13.—*Coparcener—Possession—Suit by coparcener for exclusive possession—Failure to prove right*

On appeal, the Judge concurred with the lower Court in holding that the plaintiff had failed to prove his

HINDU LAW—MAINTENANCE.

RIGHT TO MAINTENANCE.

(*a*) CONCUBINE

1.—*Permanent connection—Gift of joint family property—Father—Son's liability*—Where, in a

HINDU LAW—MAINTENANCE—*continued.*

RIGHT TO MAINTENANCE—*continued.*

(a) CONCUBINE—*concluded.*

on his death that his estate, in the hands of those who take it, becomes liable for her maintenance. NINGAREDDI *v.* LAKSHMAWA (1901)
[I. L. R., 26 Bom., 163

(b) DAUGHTER.

2.—*Sonless widowed daughter—Right of such daughter to claim separate maintenance—Obligations of the husband's family—Costs.*—A sonless widowed dau[illegible] entitled, un[illegible] to separate [illegible] which has d[illegible]

[illegible]

LALL HALDAR (1901)
[I. L. R., 28 Calc., 278; s.c., 5 C. W. N., 297

(c) SON'S WIDOW.

3.—*Daughter-in-law—Her claim to maintenance against self-acquired property devised by her father-in-law.*—The widow of a predeceased unseparated son has no right to maintenance from a [illegible]

4.—*Bengal School—Mitakshara—Widowed daughter-in-law, maintenance of—Moral obligation—Heir of father-in-law—Legal obligation—Moral right, forfeiture of—Severance from father-in-law's family.*—It is the duty of the father-in-law to maintain his widowed daughter in law. This obligation is legally enforceable where the father-in-law has by survivorship obtained property in which his son had a vested interest, as in a *Mitakshara* family. Where the father, on the death of his son, does not become entitled to any interest or property which the son had, the obligation to maintain the son's widow is only moral, and cannot be enforced in a Court [illegible]

The right to be maintained, where it exists, is not necessarily forfeited by a widow who resides away

HINDU LAW—MAINTENANCE—*continued.*

RIGHT TO MAINTENANCE—*continued.*

(c) SON'S WIDOW—*continued.*

from her father-in-law's house, as long as she remains chaste. *Raja Pirthee Sing* v. *Rani Raj Kower (1873), 20 W. R., 21; Kasturbai* v. *Shivajiram (1879), I. L. R., 3 Bom., 372,* and *Gokibai* v. *Lakhmidas Khimji (1890), I. L. R., 14 Bom., 490,* followed. If, therefore, the daughter-in-law remains a dependent member of her husband's family, the mere fact of her residence elsewhere will not disentitle her to maintenance. Where a daughter-in-law leaves her father-in-law's house during his lifetime, with the intention of residing permanently in her father's house as a member of his household, and demands and obtains from her father-in-law a Government Promissory Note belonging to her husband, which was all the money she considered herself entitled to, and intends to and does sever herself from her deceased husband's family, though she leaves the house without any quarrel with her father-in-law, she ceases to be a [illegible]

[illegible] (1901) [illegible] C. W. N., [illegible]

5.—*Separate maintenance of widowed daughter-in-law—Dependent member—Non-residence with the husband's family—Moral obligation of the father-in-law—Legal obligation of his heir—No distinction between Dayabhaga and Mitakshara Law.*—A Hindu widow does not forfeit her right to separate maintenance out of the property inherited from her father-in-law by reason of non-residence with the family of her deceased husband, unless such non-residence be for unchaste or immoral purposes. The fact that a widowed daughter-in-law has taken up her residence apart from her father-in-law with her own parents or relations does not annul his moral obligation to maintain her. It may remain dormant or in abeyance, but it subsists continuously; and, whether it be dormant or active at the death of the father-in-law, it devolves as a subsisting obligation upon his heirs, and is transformed into a legal obligation. The term "dependent member" of a family does not necessarily mean "resident member." There is no valid ground for making any distinction between the rights of maintenance of a Hindu widow under the Bengal and under the *Mitakshara* law. *Raja Pirthee Sing* v. *Rani Raj Kooer (1873), 12 B. L. R. (P. C.), 238; Kasturbai* v. *Shivajiram (1879), I. L. R., 3 Bom., 372; Narayanrao Ram Chandra Pant* v. *Ramabai (1879), I. L. R., 3 Bom., 415; Janki* v. *Nand Ram (1888), I. L. R., 11 All., 194; Mokhoda Dasi* v. *Nundo Lall Haldar (1901), I. L. R., 28 Calc., 278; Khetramani Dasi* v. *Kashinath Das (1868), 2 B. L. R. (A. C.), 15; Rangammal* v. *Echammal (1899), I. L. R., 22 Mad., 304; Yamunabai* v. *Manubai (1899), I. L. R., 23 Bom., 609; Kamini Dassee* v. *Chandra Pode Mondle (1889), I. L. R., 17 Calc.,*

HINDU LAW—MAINTENANCE—*continued.*

RIGHT TO MAINTENANCE—*continued.*

(*c*) SON'S WIDOW—*concluded.*

373, referred to and discussed. SIDDESURY DASSEE *v.* JONARDAN SARKAR (1902)
[I. L. R., 29 Calc., 557; s.c., 6 C. W. N., 530

(*d*) WIDOW.

6.—*Hindu widow—Maintenance—Ancestral property not alienable in defeasance of widow's right of maintenance.*—The holder of ancestral property cannot, where there exists a widow having a right to

until it is fixed, and charged upon the estate by a decree or by agreement; and, if such estate has been alienated and is in the hands of a *bonâ fide* transferee, the widow cannot follow the property, even though it be the case that the transferee had notice of her claim for maintenance. *Sheo Buksh Singh v. Mussumat Gunneshee Koonwur, S D A, N. W. P, 1864, I, 228; Lakshman Ramchandra*

8.—*Decree against representative of family creating charge on family property—Right to exe-*

create a charge on property, and the property to be charged can be otherwise identified, it is immaterial that the decree does not specify the property by metes and bounds A widow sued three undivided brothers for maintenance, and obtained a decree which created a charge on certain family property in respect of the maintenance sued for. The son of the first defendant was a minor at the date of the decree, and was not a party to it The widow attached the property. Upon the death of the first defendant, subsequent to the decree, his son was added as legal representative, and claimed the property by right of survivorship, and sought to have it released from attachment on the ground that it was not liable for the widow's maintenance *Held* that, as the property was charged by the

HINDU LAW—MAINTENANCE—*concluded.*

RIGHT TO MAINTENANCE—*concluded.*

(*d*) WIDOW—*concluded.*

and the decree being not merely a personal one against the father alone, but against the representatives of the family *Muttia v. Virammal, I L. R, 10 Mad, 283,* followed. MINAKSHI ACHI *v.* CHINNAPPA UDAYAN (1901)
[I. L. R., 24 Mad., 689

9.—*Unchastity of widow, as disentitling her to maintenance—Charge not specifically raised in pleadings or issues*—A charge of unchastity, as disentitling a widow to maintenance, must be specifically raised in the pleadings or issues Where there

SIDICK *v* AYESHABAI (1903)
[I. L. R., 27 Bom., 485: s.c., L. R., 30 I. A., 127; 7 C. W. N., 665.

10.—*Hindu widow—Widow in possession of deceased husband's property ousted by adopted son—Mesne profits—Maintenance—Set-off—Sums expended on funeral ceremonies of late owner*—A

mesne profits, (1) that, in absence of evidence of

reasonable amounts as might have been expended by her on the funeral ceremonies of her late husband, which the adopted son would otherwise have been bound to perform. What was a reasonable maintenance, and what sum should be allowed in respect of the funeral ceremonies under the circumstances, considered. *Sreemutty Nittokissoree Dossee v. Jogendro Nauth Mullick (1878), L. R, 5 I A, 55,* referred to DALEL KUNWAR *v* AMBIKA PARTAP SINGH (1903) . . I. L. R., 25 All., 266

HINDU LAW—MARRIAGE.

HINDU LAW—MARRIAGE—*continued.*

See HINDU LAW—WIDOW—DISQUALIFICATIONS—RE-MARRIAGE.

[I. L. R., 26 Bom., 388

See RESTITUTION OF CONJUGAL RIGHTS.

[I. L. R., 28 Calc., 37

1. CEREMONIES.

1.—*Legitimate marriage expenses — Ceremonies of Griha Pravesam and Ruthusanti — Contract Act (IX of 1872), s 69 — Person interested in making payment—Daughter's marriage expenses defrayed by widowed mother — Claim against brother of the widow's late husband.*—The ceremonies of "*Grihi Pravesam*" and "*Ruthusanti*" are essentially connected with the disposal in marriage of a girl of the Brahmin caste, and form a part of the marriage ceremonies A Hindu widow performed these ceremonies for her daughter, and sued to recover their cost from her late husband's undivided brother. In a previous case between the same parties it had been decided that the defendant was liable to be charged with the expenses of the marriage of the plaintiff's daughter. *Held* that plaintiff was entitled to recover the cost of these two ceremonies. The expenses were legitimate marriage expenses, and plaintiff had the right to sue, as she was the person who was interested in making the payment which the defendant (under the decision referred to) was bound to make VAIKUNTAM AMMANGAR *v.* KALLIPIRAM AYYANGAR (1902)

[I. L. R., 26 Mad., 497

2. NO OBLIGATION TO GET DAUGHTER MARRIED

2.—*Liability of father to get his daughter married.*—Under the Hindu law, a father is under no legal obligation to get his daughter married *Vaikuntam Ammangar* v. *Kallipiram Ayyangar, I. L. R., 23 Mad., 512,* explained. Where a wife expended money on her daughter's marriage, and then sued her husband for the amount so expended: *held* that she was not entitled to recover SUNDARI AMMAL *v.* SUBRAMANIA AYYAR (1902)

[I. L. R., 26 Mad., 505

3 VALIDITY OR OTHERWISE OF MARRIAGE

3.—*Marriage between persons of different castes—Marriage between Vaidya and Kayastha, validity of—Validity of such marriages in Tippera — Custom — Vaisya Sudra* — Where plaintiff's father was a *Vaidya* and his mother a *Kayastha,* and the defendant took an objection that plaintiff was therefore an illegitimate son: *Held* that it could not be [illegible]

[illegible]

HINDU LAW—MARRIAGE—*concluded.*

3 VALIDITY OR OTHERWISE OF MARRIAGE—*concluded.*

Courts so as to make children from unequal marriages illegitimate. *Also* that such marriages are recognised by local custom in the district of Tippera, and are therefore valid. RAM LAL SHOOKOOL *v.* AKHOY CHARAN MITTER (1903) . . 7 C. W. N., 619

4 EVIDENCE AS TO, AND PROOF OF, MARRIAGE.

4.—*Cutchi Memons — Marriage, evidence of,* [illegible]

[illegible]

the circumstances of the marriage made it natural that the wife should be an object of the husband's testamentary bounty and improbable that he should have left her to depend on her legal right to maintenance. In this case it was *held* that the circumstances of the marriage made it not unlikely that the [illegible]

dra [illegible]

test [illegible]

tha [illegible]

reje [illegible]

by [illegible]

RAI [illegible]

HINDU LAW—PARTITION.

——effect of partition—

See HINDU LAW—

JOINT FAMILY—

PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY;

DEBTS, AND JOINT FAMILY BUSINESS;

[I. L. R., 26 Mad., 28

HINDU LAW—PARTITION—*continued.*

——effect of partition—*concluded.*

See HINDU LAW—*concluded.*

STRIDHAN—

DESCRIPTION AND DEVOLUTION OF STRIDHAN;
[I. L. R., 24 All., 67

POWER TO DISPOSE OF STRIDHAN . I. L. R., 24 All., 82

1 REQUISITES FOR PARTITION

1.—Evidence — *Joint family — Evidence of separation—Conduct of parties as showing intention—Decree in litigation between members creating partition — Decree ascertaining shares of individual members* —Where it was found (1) that the result of former litigation had been to ascertain the shares of individuals of a Hindu family, and that, although there had been, from the nature of

SINGH *v.* LAKHPATI KOER (1902)
[I. L. R., 30 Calc., 231:
s c., 7 C. W. N., 162; L. R., 30 I. A., 1

2. —— — *Deed defining and allotting shares — Effect on deed of subsequent conduct of the parties—Effect of deed as regards minor members of joint family—Reunion of member after once separating himself*—An *ekrarnama* executed by the members of a joint family, some of

together as a member of the joint family as before or to separate his own business" *Held* that

their shares by metes and bounds or to continue to live together and enjoy their property in common

ekrarnama The legal effect of the *ekrarnama* could

HINDU LAW—PARTITION—*continued.*

1. REQUISITES FOR PARTITION—*concluded.*

not be controlled or altered by evidence of the subsequent conduct of the parties; but such conduct in this case was not inconsistent with an intention to subject the whole property to a division of

only (according to the text of *Vrihaspati* quoted in the *Mitakshara*, Ch II, s 9) with a father, brother or paternal uncle. BALKISHEN DAS *v* RAM NARAIN SAHU (1903)
[I. L. R., 30 Calc., 738:
s c., 7 C. W. N., 578; L. R., 30 I. A., 139

2. PROPERTY LIABLE OR NOT TO PARTITION

raiyatwari village *R*, the father of plaintiff and

delivered to *R*, and were actually delivered to him

November, 1889, notified to *R* that his name was

order that items 6 and 7 had been "resumed and fully assessed" *R* had died at a date prior to this, and second defendant was holding the office On a suit being instituted by plaintiff for partition: *Held per* BHASHYAM AYYANGAR, *J*. that when a

assessment in excess of quit-rent being resumed. Similarly, the enfranchisement of a service *inam* does not operate as a resumption and a fresh grant by the Government subject to the payment of a quit-rent,

HINDU LAW—PARTITION—*continued.*

2. PROPERTY LIABLE OR NOT TO PARTITION—*concluded.*

any more than it is so in the case of the enfranchisement of a personal ...

Narayana v. *Chengalammal, I. L. R*, 10 *Mad.*, 1, followed *Vankata* v *Rama, I. L. R*, 8 *Mad*, 249, explained *Dharnipragada* v. *Kadamabari, I. L. R*, 21 *Mad*, 47; and *Venkatarayadu* v. *Venkata Ramayya, I L. R*, 15 *Mad*, 284, dissented from. *Per* MOORE, *J.*—Even assuming item No. 5 to be the self-acquisition of *R*, according to *Dharnipragada* v *Kadambari, I. L. R, 21 Mad.*, 47, and *Vankatarayadu* v. *Venkata Ramayya, I. L. R.*, 15 *Mad.*, 284, the plaintiff was entitled, as his son, to his share. As to items 6 and 7, there was no enfranchisement and no fresh grant or title-deed in favour of second defendant. ...

rayadu v. *Venkata Ramayya, I. L R.*, 15 *Mad*, 284, were correctly decided *Venkata* v *Rama, I L R.*, 8 *Mad*, 249, explained. *Per* CURIAM, that items 5, 6 and 7 were liable to partition GUNNAIYAN *v.* KAMAKCHI AYYAR (1902)

[I. L. R., 26 Mad., 339

4.—Lease—*Suit for partition—Evidence that the joint property had been leased—Available for partition* ... ourse ... one ... t, it ... was sought had, a few years before suit, been let on lease for a period of twenty-four years *Held* that this was no ground for rejecting the suit. Delivery of the lands which might be found to be in the possession of tenants could be given under s 264 of the Civil Procedure Code. UPPALA RAGHAVA CHARLU *v.* UPPALA RAMANUJA CHARLU (1902)

[I. L. R., 26 Mad., 78

3 PARTITION OF PORTION OF PROPERTY

5.—*Joint Hindu family—Suit for partition—Partition of the whole joint family property not claimed.*—The plaintiff, a member of a joint Hindu ...

... only *Held* that it was not necessary for the plaintiff to include in the suit other property, which belonged jointly to the plaintiff, the defendant and other members of the joint family. *Purushottam* v. *Atmaram (1899), I L R*, 23 *Bom*, 596, referred to. LACHMI NARAIN *v.* JANKI DAS (1901)

[I. L. R., 23 All., 216

HINDU LAW—PARTITION—*continued.*

3. PARTITION OF PORTION OF PROPERTY—*concluded.*

6.—*Division of family property—Agreement that share of one member in income of village should be paid him by managing member—Subsequent claim for partition.*—By an agreement entered into by the members of a family of whom plaintiff was one, the parties became completely divided in interest in respect of all their property, but, so far as a certain village was concerned, it was agreed that plaintiff should receive one-fourth of the net income (on ...

TAWKER *v.* RAJARAM TAWKER (1901)

[I. L. R., 25 Mad., 585

4 RIGHT TO PARTITION.

(*a*) GRANDSON.

7.—*Suit for partition of ancestral estate by grandson, when both father and grandfather alive, when maintainable*—A member of a joint ...

... followed. TELANG, J's decision in *Apaji Nahas* v. *Ramchandra (1891), I. L. R*, 16 *Bom*, 29 approved RAMESHWAR PROSAD SINGH *v.* LACHMI PROSAD SINGH (1903) . . . 7 C. W. N., 688

(*b*) ILLEGITIMATE CHILDREN.

8.—*Sudras—Illegitimate son—Claim to partition* ...

... other collateral heirs, having regard to the rulings in *Krishnayyan* v. *Muttusami, I. L. R*, 7 *Mad.*, 407, *Ranoji* v *Kandoji, I L R.*, 8 *Mad*, 557, and *Parvathi* v. *Thirumalai, I. L R*, 10 *Mad*, 334 ...

(*c*) PURCHASER FROM CO-PARCENER.

9.—*Purchase from member of an undivided family—Undivided share of vendor in land forming part of the joint estate—Death of vendor—Subsequent*

HINDU LAW—PARTITION—*continued.*

4. RIGHT TO PARTITION—*continued.*

(c) PURCHASER FROM CO-PARCENER—*concluded.*

suit by purchaser against survivors for partition of entire estate, for recovery of the portion purchased —Maintainability —Plaintiff purchased 2 acres and

nephews (brother's sons) *V* subsequently died, leaving his two nephews him surviving After *V*'s decease, plaintiff instituted the present suit against the nephews, in which he claimed partition of the

vations by BHASHYAM AYYANGAR, *J*, on the

VENKATARAMAYYA *v.* AIYYAGARI RAMAYYA (F.B., 1902). . . I. L. R., 25 Mad., 690

(d) WIDOW.

10.—*Limitation Act (XV of 1877), Sch II, Art. 127—Proof of exclusion from joint family property—Mere non-participation in, or refusal to live on, joint property, insufficient—Hindu Law—Suit by one of three widows against her two co-widows for partition of widow's estate in their late husband's property—Proof of unchastity on,*
for
ma
the
sur-
common, participated for some time in the profits of their late husband's property. After his decease, one of the widows began to lead an immoral life and refused to live with the other two In 1895 she sued her co-widows for partition and for an allotment of her one-third share of the property She claimed to have participated in the profits of the family property until 1890, but the defendants contended that she had ceased to participate therein for more than twelve years before the institution of the suit, and raised the plea of limitation They also pleaded that plaintiff was not entitled to claim partition, by reason of her unchastity. It was proved that plaintiff had been living with her paramour subsequent to her husband's decease, and had supported herself without recourse to the family property, and had refused to live with defendants.

HINDU LAW—PARTITION—*continued.*

4. RIGHT TO PARTITION—*concluded.*

(d) WIDOW—*concluded.*

Held that the burden lay on the defendants of proving that plaintiff, who was admittedly a tenant-in-common with them till 1882, was excluded from enjoyment of the property Mere proof of refusal on the part of the plaintiff to live with her co-widows, or of non-participation by her in the family property, did not establish ouster or exclusion by defendants, and there was no other evidence to show that she had abandoned her interest to their knowledge *Held* also that proof of plaintiff's unchastity after her husband's death did not disentitle her to claim partition of the property by metes and bounds. A widow, being a tenant-in-common, is entitled to partition as a matter of right, and the Court has no discretion in the matter SELLAM *v.* CHINNAMMAL (1901) . I. L. R., 24 Mad., 441

5 EFFECT OF PARTITION.

11.—*Contract by managing member of joint*

family, the father, as managing member, entered into a contract by which he undertook to pay to plaintiff any shortfalls that might take place in

RAMACHANDRA PADAYACHI *v* KONDAYYA CHETTI (1901) . . . I. L. R., 24 Mad., 555

12.—*Joint Hindu family—Mortgage of an undivided share—Effect on such mortgage of a subse-*

[I. L. R., 24 All., 483

13.—*Transactions amounting to partition or separation—Reunion—Agreement to reunite—Minor—Presumption when one co-parcener separates himself—Agreement to remain united—Mitakshara Law.*—According to the text of *Vrihaspati* (*Mitakshara*, Ch. II, s. 9), a reunion in estate, properly so called, can only take place between persons who

HINDU LAW—PARTITION—*concluded.*

5. EFFECT OF PARTITION—*concluded.*

were parties to the original partition. *Semble*: an agreement to reunite cannot be made on behalf of a person during his minority. There is no presumption, when one co-parcener separates from the others, that the latter remain united. Where it is necessary, in order to ascertain the share of the outgoing co-parcener, to fix the shares which the others are, or would be, entitled to, the separation of one may be said to be the virtual separation of all. And an agreement amongst the remaining co-parceners to remain united or to reunite must be proved, like any other fact. In this case, in which the appellant claimed to be entitled on the death of his uncle in 1882 to the property of a joint family by right of survivorship, one of the members had admittedly separated himself in 1869, and no agreement by the other members to remain united or to reunite had been proved; and, upon the circumstances of, and evidence in, the suit, it was held by the Judicial Committee that the appellant had not sufficiently established the state of jointness between himself and his uncle, which was necessary to make his claim successful, and that, even had it been established, transactions in 1889 settled with the appellant's knowledge and consent amounted to a division amongst the members of the family, which would defeat his claim. BALABUX *v.* RUKHMABAI (1903)
[I. L. R., 30 Calc., 725;
s.c., 7 C. W. N., 642;
L. R., 30 I. A., 130

HINDU LAW—REVERSIONERS.

See HINDU LAW—

ADOPTION—EFFECT OF ADOPTION;
[5 C. W. N., 20

ALIENATION—ALIENATION BY WIDOW;

DEBTS;
[I. L. R., 26 Bom., 206

WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.

See LIMITATION ACT, 1877, SCH. II—

ART. 118; I. L. R., 25 Bom., 26
ARTS. 120 AND 125;
[I. L. R., 26 Mad., 488

ART. 141.

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY.
[L. R., 28 I. A., 1

1.—Power of reversioners to alienate reversionary interest *-Transfer of Property Act (IV of 1882), s. 6, cl. (a)—Hindu reversioner's contingent right—Mortgage of such right, validity of*—The interest of a Hindu reversioner expectant upon the death of a Hindu female cannot validly be mortgaged by the reversioner. *Brahmadeo Narayan* v. *Harjan Singh (1894), I. L. R., 25 Calc., 778*, overruled by *Sham Sunder Lal* v. *Achhan Kunwar*

HINDU LAW—REVERSIONERS —*concluded.*

(1898), L. R., 25 I. A., 183 NAND KISHORE LAL *v.* KANU RAM TEWARY (1902)
[I. L. R., 29 Calc., 355;
s.c., 6 C. W. N., 395

2.—Administration suit by reversioners *—Practice—Conduct of proceedings.*—Under Hindu law, a person entitled to an estate in reversion

guished. If a dedication by a testator, of property to which a reversionary heir would be entitled, is not valid, and the executors propose to carry out the dedication, such an act would entitle ... of the ... stered. ... I. L. ... person entitled to an estate in reversion brings a suit

adopted in the second decree, so far as it can be applied, and the reversioner, who brought the first suit, will be entitled to the conduct of the proceedings. *Zambaco* v. *Cassavetti (1871)*,

HINDU LAW—STRIDHAN.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—UNCHASTITY.
[I. L. R., 26 Mad., 509

1. DESCRIPTION AND DEVOLUTION OF STRIDHAN.

HINDU LAW—STRIDHAN—*continued.*

1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued.*

Bank (1903), I L. R , 25 All , 476—entry No. 2, *post*, in this column] In this case her sons were held entitled to succeed to such property in preference to her daughter. SHEO SHANKAR LAL *v.* DEBI SAHAI (1903) . . . . **I. L. R. 25 All., 468 :**
[s.c., L. R., 30 I. A., 202 ;
7 C. W. N., 831

2. ——— ——— *Mitakshara — Property inherited by a female from a female—Benares School of Law—Property taken as heir of a talukdar under the Oudh Estates Act (I of 1869) —Act I of 1869, ss. 2 and 11—Power of alienation over property so inherited*—Under the Hindu Law of the Benares School, there is no distinction, as to the nature of the estate taken, between property inherited by a woman from a male, and property inherited by her from a female. In both cases she takes it, not absolutely as her *stridhan*, but for a qualified estate alienable only under the conditions applicable to such an estate, and with reverter after her death to the heirs of her predecessor in title [see *Sheo Shankar Lal* v *Debi Sahai (1903), I. L R , 25 All ,* 4..—entry No. 1, *ante*, ...

who inherits property otherwise than as a widow" under the Act, and the provisions of s 11, she had no power of alienation greater than, and irrespective of, her interest under the Hindu Law; the Judicial ...

... ıse it ... sity, ... own ... was ... the ... had reverted SHEO PARTAB BAHADUR SINGH *v* ALLAHABAD BANK (1903) . **I. L. R., 25 All., 476 :**
[s.c., L. R , 30 I. A., 209
7 C. W. N., 840

3.—**Partition**—*Mitakshara—Joint Hindu family—Share of mother on partition*—According to the *Mitakshara* law, the share which the mother in a joint Hindu family obtains on partition, after the death of the father, of the joint family property between the mother and the sons, becomes the mother's *stridhan*, which devolves, on her death, upon her own heirs, and not upon the ...

HINDU LAW—STRIDHAN—*concluded.*

1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*concluded.*

(1873), 20 W. R., 192; Lalljeet Singh v. *Raj Coomar Singh (1873), 20 W. R , 336 ; Sheodyal Tewaree* v. *Judoo Nath Tewaree (1868), 9 W. R ,* ...

I. L R , 11 All., 296, referred to CHHIDDU *v.* NAUBAT (1901) . . **I. L. R., 24 All., 67**

2 EFFECT OF UNCHASTITY

4.—**Inheritance.**—Unchastity does not debar a Hindu woman from inheriting the *stridhan* property of her female relatives *Ganga Jati* v. *Ghasita (1875), I. L R , 1 All , 46,* followed *Ramnath Tolapattro* v. *Durga Sundari Debi (1878), I. L R , 4 Calc , 550 ; Ramananda* v. *Raikishori Barmani (1891), I. L. R , 22 Calc , 347,* distinguished NOGENDRA NANDINI DASSI *v.* BENOY KRISHNA DEB (1902)
[I. L. R., 30 Calc., 521 ;
s c., 7 C. W. N., 121

3 POWER TO DISPOSE OF STRIDHAN

5.—*Mitakshara—Joint Hindu family—Partition—Share of mother on partition.*—The share which is taken by the mother in a Joint Hindu family upon partition of the family property being her *stridhan*, she is capable of alienating it at her pleasure PAL RAI *v.* SURAJBALI (1901)
[I. L. R., 24 All., 82

HINDU LAW—USURY

...

HINDU LAW—WIDOW.

HINDU LAW—WIDOW—*continued.*

See HINDU LAW—

ADOPTION—

REQUISITES FOR ADOPTION—

AUTHORITY;
[I. L. R., 30 Calc., 965
I. L. R., 26 Mad., 627, 681

WHO MAY OR MAY NOT ADOPT;
[I. L. R., 26 Bom., 526
" 27 Bom., 492

EFFECT OF ADOPTION;
[5 C. W. N., 20

ALIENATION—ALIENATION BY WIDOW;

DEBTS; I. L. R., 26 Bom., 206

INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW;

MAINTENANCE—RIGHT TO MAINTENANCE—

SONS' WIDOW;

WIDOW;

PARTITION—RIGHT TO PARTITION—WIDOW;

STRIDHAN;

WILL—CONSTRUCTION OF WILLS—

ADOPTION;
I. L. R., 28 Calc., 499

VESTED AND CONTINGENT INTERESTS.
[I. L. R., 29 Calc., 699

See LAND ACQUISITION ACT, SS 31 AND 32
[I. L. R., 24 All., 189

See LETTERS OF ADMINISTRATION.
[6 C. W. N., 345

See LIMITATION—QUESTION OF LIMITATION . . I. L. R., 29 Calc., 664

——gift to widow—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS — VESTED AND CONTINGENT INTERESTS . I. L. R., 29 Calc., 699

——power of widow; power of disposition or alienation—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ADOPTION
[I. L. R., 28 Calc., 499

1 INTEREST IN ESTATE OF HUSBAND

BY INHERITANCE.

1.—*Migration by widow of a subject of French India to British India—Acquisition of domicile in British India—Character of her widow's estate.*—Migration, by the widow of a Hindu subject of French India, to British India, and acquisition of a British Indian domicile, does not change the character of the estate held by the widow; and, if she does not adopt the system of law prevalent among Hindus in British India, the property inherited by her from her husband will be held by her according to the customary law of French India. MAILATHI ANNI *v.* SUBBARAYA MUDALIAR (1901)
[I. L. R., 24 Mad., 650

HINDU LAW—WIDOW—*continued.*

1. INTEREST IN ESTATE OF HUSBAND—*concluded*

BY INHERITANCE—*concluded.*

2. POWER OF WIDOW.

POWER OF DISPOSITION OR ALIENATION.

2.—Power of alienation — *Hindu widow — Alienation, power of, over immovable property—Bequest by husband — Will, construction of—Grant of absolute power, express or implied—Re-*[illegible] *Indian* [illegible] a mere [illegible] usband [illegible] alien-ation, yet, where any such property is given by the husband to the wife with express power of alienation, or when this power is implied by the grant, she would acquire an absolute power of disposal over the property; and, when the gift is made by a Will, the legatee is entitled, under the provisions of s 82 of the Indian Succession Act, to the whole interest of the testator, unless it appears from the Will that only a restricted interest was intended to be given. Where a Will does not in express terms convey any estate of inheritance to a Hindu widow, still the widow will be entitled to alienate the property at her pleasure, if there is no restriction imposed by the terms of the Will, so far as the power of aliena-[illegible]

[6 C. W. N., 5[illegible]

3 —— A lease granted by a Hindu widow, in possession of her widow's estate, does not necessarily become void on her death, but is only voidable by the next inheritor of the estate SADAI NAIK *v.* SERAI NAIK (1901)
[I. L. R., 28 Calc., 533;
s.c., 5 C. W. N., 279

4.——*Property inherited by widow from her husband—Acquisitions, with the income*

HINDU LAW—WIDOW—*continued.*

2. POWER OF WIDOW—*continued.*

POWER OF DISPOSITION OR ALIENATION—*continued.*

thereof—No indication of intention by widow to make the acquired property part of the husband's estate for the benefit of his heirs—Presumption that widow intended to retain control —A Hindu widow inherited certain property from her husband; and, with the income thereof, acquired land on a usufructuary mortgage for 62 years She assigned the unexpired portion of the term of the mortgage for consideration, and subsequently died The reversionary heirs to her late husband then sued her *assignees for the property* There was no evidence that the widow had ever indicated any intention to make the property part of her husband's estate for the benefit of his heirs. *Held* that there was no presumption that the widow intended to part with her power of disposition for the benefit of her reversionary heirs The acquirer of property presumably intends to retain dominion over it, and in the case of a Hindu widow the presumption is none the less so when the fund with which the property is acquired is one which, though derived from her husband's property, was at her absolute disposal Inasmuch as the widow's absolute power of disposition over the *income derived from the widow's estate is now fully* recognized, she will be presumed, in the absence of an indication of her intention to the contrary, to retain the same control over the investment of such income. Nor is that presumption affected by the fact that properties thus acquired by her are managed and enjoyed by her, without any distinction, with properties inherited from her husband. She is the

5.—————— *Enfranchisement of land in favour of widow as personal inam land—Lease by widow—Sale of the land by her reversioners—Validity of lease—Title of purchaser* —Certain land had been enfranchised in favour of a Hindu

6.—————— *Widow's estate—Alienation by widow—Subsequent adoption—Right of adopted*

son, the son cannot sue to recover possession of the

HINDU LAW—WIDOW—*continued,*

2. POWER OF WIDOW—*continued.*

POWER OF DISPOSITION OR ALIENATION—*continued.*

property until the termination of her widowhood.

...owhood, to the period If the

of adoption, in the adopted son, as a vested remainder to fall into possession at the termination of the

7.—————— *Alienation by one of two co-widows—Effect on the inheritance and on the interest of the alienor* —Though one of two co-widows, who is not the managing member on behalf of both, cannot charge the inheritance even where the transaction is for the benefit of the estate, an alienation by her will bind her own interest in the property during her life-time VADALI MAMIDIGADU *v.* KOTIPALLI RAMAYYA (1902)

I. L. R., 26 Mad., 334

8.—————— *Lease—Limitation—Hindu*

executed by her, is governed by Art. 91, and not by Art 141, of Sch II to the Limitation Act

9.—————— *Mitakshara—Property given or devised to wife by husband—Widow's powers of alienation.—Held* that, under the Hindu law, in the

HINDU LAW—WIDOW—*concluded.*

2. POWER OF WIDOW—*concluded.*

POWER OF DISPOSITION OF ALIENATION—*concluded.*

case of immovable property given or devised by a husband to his wife, the wife has no power to alienate

3. DECREES AGAINST WIDOW, AS REPRESENTING THE ESTATE, OR PERSONALLY.

10.—*Sale of widow's estate—Right, title or interest of widow, when passes, and when complete estate passes, by sale in execution of decree*—The question whether, upon an execution-sale, the mere right, title or interest of a Hindu widow or the

4. DISQUALIFICATIONS

RE-MARRIAGE

11.—*Inheritance—Succession to a son of first marriage, notwithstanding re-marriage—Hindu Widows' Re-marriage Act (XV of 1856), ss. 2, 5*—The widow of a Hindu married a second time.

HINDU LAW—WILL.

See ADMINISTRATION.
[I. L. R., 26 Bom., 267

HINDU LAW—WILL—*continued.*

——construction of wills—

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . . 5 C. W. N., 300

See SUCCESSION ACT, s 96.
[I. L. R., 24 Mad., 299

——nuncupative will—

See PROBATE—OF WHAT DOCUMENTS GRANTED . I. L. R., 25 All., 313

1. CONSTRUCTION OF WILLS.

(*a*) ESTATES ABSOLUTE OR LIMITED.

1.—*Direction as to management of endowment by testator's daughter and her husband and their*

daughter in succession On the death of the last surviving son of his daughter, the succession of *sebaits* failed, and the *sebaitship* reverted to the heirs of the testator. GOPAL CHUNDER BOSE *v.* KARTICK CHUNDER DEY (P.C, 1902)
[I. L. R., 29 Calc., 716

2.—*Mitakshara School—Bequest of estate of*

HINDU LAW—WILL—*continued*

1. CONSTRUCTION OF WILLS—*continued.*

(a) Estates absolute or limited—*concluded.*

the said *guddi*, was not void by reason of the ignorance of the parties as to the effect of certain inoperative clauses of the Will regarding perpetuity and [illegible] The property was the self-acquired [illegible] est [illegible] his [illegible] nd [illegible] p. [illegible] na, [illegible] id- son of the executant [illegible] its [illegible] could be obtained by [illegible]

(1900), [illegible]
Rameshwar Prosad Singh *v.* Lachmi Prosad Singh (1903) . . . 7 C. W. N., 688

(b) Adoption

3.—*Bequest to testator's adopted son, not conditional on adoption having taken place.*—A testator stated in his Will that he had been keeping a minor as his adopted son, and recited, in a bequest of property [illegible] On [illegible]

expression that the [illegible] minor as his adopted son meant keeping him with a view to his adoption, and that the bequest to the [illegible]

4.—*Hindu widow—Testator—Alienation—Ad-* [illegible] *from such administra-* [illegible]

(1901) . . . I. L. R., 28 Calc., 200

HINDU LAW—WILL—*continued.*

1. CONSTRUCTION OF WILLS—*continued.*

(b) Adoption—*concluded.*

5.—*Construction of document—Document of a testamentary nature—Declaration made in wajib-ul-arz, by the sole proprietor of a village, as to his wishes respecting the devolution of the property after his death.*—The sole proprietor of a certain village caused the following entry to be recorded in the village *wajib-ul-arz*: "I am the only *zamindar* in this village I am a Marwari Brahmin Seven years ago I adopted my sister's son, Murli. He is my heir and successor (*malik*). If, after this agreement, a son is born to me, half the property would be received by him and half by the adopted son If more than one son be born to me, the property would be equally divided among them, including the adopted son, as brothers I have two wives now. They will receive their maintenance from him (Murli)" A son was born to the person making this declaration, but he died before the plaintiff's suit was instituted. As to the adoption of Murli, it was found that, although Murli had been brought up by his alleged adoptive father, and more or less treated by him as his son, it was not satisfactorily proved that there had been any valid adoption, even if such adoption were legally possible. *Held* that the declaration in the *wajib-ul-arz* above [illegible] a testamentary declaration of the [illegible]

(c) Bequest to Idol

6.—A bequest to an idol not in existence at the time of the testator's death is void Nogendra Nandini Dassi *v.* [illegible]enoy Krishna Deb (1902)
I. L. R., 30 Calc., 521, s.c., 7 C. W. N., 121

(d) Vested and Contingent Interests.

7.—*Words of inheritance—O putra pautradi, meaning of—Hindu widow's estate—Estate for life—Intention of the testator Power given to adopt, effect of*—A Will contained, amongst others, the following directions· "After my death, my widow, being in possession for the term of her natural life (*jabat jiban*) of my properties, shall perform the *Iswar Seba* and other rites My widow shall have [illegible] death of my widow [illegible]

HINDU LAW—WILL—*concluded.*

1. CONSTRUCTION OF WILLS—*concluded.*

(*d*) VESTED AND CONTINGENT INTERESTS—*concluded.*

widow's estate, but an ordinary life estate. The brother's son took a vested estate of inheritance, subject to the widow's life estate, and only liable to be divested by the widow's adoption of a son. The widow not having adopted any son, the brother's son took the ultimate estate absolutely, and his sons would inherit equally, though some of them were not born at the time of the testator's death. GOORDO DAS MUSTAFI *v* SARAT CHUNDER MUSTAFI (1902)
[I. L. R., 29 Calc., 699; s.c., 6 C. W. N., 721

2. REVOCATION OF WILL.

8.—*Mitakshara—Inheritance—Two grandsons through the same daughter take as joint ancestral estate—Practice—Costs of printing record.*—

recovered, and executed a power-of-attorney appoint- ... try, he he to had TA-
[L. R., 29 I. A., 156; s.c., I. L. R., 25 Mad., 678; 7 C. W. N., 1

HINDU WIDOW.

See HINDU LAW—WIDOW.

HOSPITAL, BEQUEST TO.

See WILL—CONSTRUCTION—CHARITABLE GIFT . . . 6 C. W. N., 321

HUNDI.

	Col.
1. ACCEPTANCE	475
2. ENDORSEMENT	476
3. NOTICE OF DISHONOUR	477

1. ACCEPTANCE.

1.—*Acceptance of hundi as conditional or absolute payment*—In a suit for the amount due on account of goods sold and delivered and money lent, the defence was that plaintiff had accepted *hundis* in discharge of the debt and was in consequence

HUNDI—*continued.*

1. ACCEPTANCE—*concluded.*

of 2½ per cent. and that, in consequence, plaintiff had no cause of action, either on the original debt or upon the *hundis*, as he had taken the risk of the latter

2. ENDORSEMENT.

2.—*Shahjoge hundi—Endorsee for realization—Effect of such endorsement—Maintainability of a suit by such endorsee for realization—Delivery,*

and sent by him to the plaintiffs The plaintiffs handed the *hundi* to one *S*, the plaintiffs' *jemadar*, who had been in the habit of taking *hundis* on their behalf for acceptance and payment, to be taken by him to the defendants for acceptance. *S* took the

tiffs' signature to it, and obtained payment. The defendants, before such payment, had made no inquiries as to the position or respectability of *E*, and paid the *hundi* on the faith of the forged signature. *Held* that such an endorsement, coupled with the delivery of the *hundi*, entitles the plaintiffs to sue for and receive payment of the *hundi* from the acceptors, though as between the drawer and the plaintiffs the latter are mere agents or parties with a defeasible title. Such an endorsement is in the nature of a restrictive endorsement, giving the endorsee the right to receive payment of the *hundi* and if necessary to sue the acceptor for the amount, but not to transfer his rights as endorsee to anybody else; any defence which would be available to the acceptor against the drawer would be available against the endorsee A *hundi* payable *shahjoge* is only
same
Futt
The
endorsement *Gones Dass* v *Luchmi Narayan (1893)*, *I L. R*, *18 Bom*, *570*, referred to *Held, also*, that

HUNDI—*concluded.*

2. ENDORSEMENT—*concluded.*

made to them. *Robarts v. Tucker (1851), 16 Ad. and El., 560; Bank of Ireland v. Trustees of*

such a hundi would not, before acceptance, pass merely by delivery to a respectable holder. *Goursi-mull v. Dhansuk Das (1865), 7 B L R., 289, foot-note,* and *Thakurdass v. Futteh Mull (1871), 7 B. L. R., 275,* referred to BHUPUTRAM *v.* HARI PRIO COACH (1900) . . . 5 C. W. N., 313

3 NOTICE OF DISHONOUR

informed, not only that the instrument has been dishonoured, and in what way, but also that he will be held liable thereon. So, where a drawee of a bill of exchange does not accept it, though the drawer is primarily liable, the payee should give notice of dishonour to the drawer JAMBU CHETTY *v.* PALANIAPPA CHETTIAR (1902) I. L. R., 26 Mad., 526

dishonour was given to the drawer, or that he (the drawer) did not suffer any damage for want of such a notice *Krishnashet Bin Ganshet Shetye v. Hari Valji Bhatye (1895), I L R, 20 Bom, 488,* and *Moti Lal v Moti Lal (1883), I L. R, 6 All, 78,* referred to AMIRUDDI BEPARI *v* BAHADOOR KHAN (1903)

[I. L. R., 30 Calc., 977; s.c., 7 C. W. N., 878

HURT.

GRIEVOUS HURT

—*Penal Code (Act XLV of 1860), ss 304, 149, 326—Commitment for offences of rioting and culpable homicide not amounting to murder—Constructive guilt of members of unlawful assembly—Grievous hurt, whether it may be regarded as a*

HURT—*concluded.*

GRIEVOUS HURT—*concluded.*

grievous hurt is not a minor offence or an offence involved in the *offence under s 304* (culpable homicide

the event of the charges not being sustainable, be convicted of an offence under s 326, Indian Penal Code S 304 of the Penal Code, read with s 149, applies only *to persons* who, though not taking an active part in an unlawful assembly, are liable to

[6 C. W. N., 98

HUSBAND AND WIFE.

See ADULTERY

See DEFAMATION—IMPUTATION ON A WIFE . . I. L. R., 25 Bom., 151

See DIVORCE ACT.

See HINDU LAW—

HUSBAND AND WIFE;

MARRIAGE.

See LIMITATION ACT, 1877, SCH. II, ART. 35 . I. L. R., 25 Bom., 644

See RESTITUTION OF CONJUGAL RIGHTS.

——maintenance—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT. [I. L. R., 26 Bom., 707

——suit for possession of wife—

See COURT-FEES ACT (VII OF 1870) [I. L. R., 28 Calc., 567

—*Execution of document by pressure and concealment of material facts—Trustee and cestui que trust—Independent advice*—Where a husband obtained the execution of a deed by his wife, creating a charge over her separate property, by concealment of material facts: *Held* that the deed was not binding on the wife. TURNBULL & Co *v* DUVAL (P C, 1902) . . . . 6 C. W. N., 809

I

IDIOTCY.

See INSANITY.

IDOL.

——bequest to—

See HINDU LAW—WILL—*CONSTRUCTION* OF WILLS—BEQUEST TO IDOL.

INCOME TAX ACT (II OF 1886)— *concluded.*

——s. 47—*concluded*

of a company or a firm, and not to the case of an individual carrying on business HADJEE AJAM GOLAM HOSSEIN *v* SECRETARY OF STATE FOR INDIA IN COUNCIL (1901) . **5 C. W. N., 257**

INCONTINENCE.

See UNCHASTITY.

INCORPOREAL RIGHT.

See SPECIFIC RELIEF ACT (I OF 1877), s. 9 . . **I. L. R., 29 Calc., 614**

INCUMBRANCES.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES.

See SALE IN EXECUTION OF DECREE—IMMOVABLE PROPERTY. **[5 C. W. N., 497**

INDECENCY.

See SECURITY FOR GOOD BEHAVIOUR. **[I. L. R., 30 Calc., 366**

INDIAN COUNCILS ACT, 1861 (24 & 25 VICT., c. 67).

See BOMBAY CITY IMPROVEMENT ACT. **[I. L. R., 27 Bom., 424**

—— s. 42; power of Indian Legislatures to affect the prerogative of the Crown—

See MADRAS CITY MUNICIPAL ACT, s. 341. **[I. L. R., 25 Mad., 457**

INDIAN COUNCILS ACT, 1892 (55 & 56 VICT., c. 14).

—— s. 5—

See BOMBAY CITY IMPROVEMENT ACT. **[I. L. R., 27 Bom., 424**

INDICTMENT.

See CHARGE

INFANT.

See GUARDIAN.

See MINOR.

INFLUENCE.

See UNDUE INFLUENCE.

INFORMATION OF COMMISSION OF OFFENCE.

1.—First information—*Criminal Procedure Code (Act V of 1898), s. 154.*—Where, upon information received, from the chaukidar of the offence (and which information was duly recorded in the Station Diary), the Sub-Inspector had gone to the Hospital to see the wounded man, and had there recorded the statement made by him: *Held* that this record of such statement can in no sense be [illegible]

2.—————— *Criminal Procedure Code, s. 154—First information, when should it be recorded—Police-officer's memorandum, in addition to entry in the diary.*—Information on which an investigation has commenced is the first information of the occurrence. The law does not contemplate that when, in the course of the investigation, something has been elicited, a first information can thereupon be recorded In every trial it is important that it should be known to the judicial officer what are the facts given out immediately after the occur- [illegible]

INHERITANCE.

See HEREDITARY OFFICES ACT (BOMBAY ACT III OF 1874), ss. 4, 5 **[I. L. R., 25 Bom., 470**

See HINDU LAW—

CUSTOM—INHERITANCE AND SUCCESSION;

INHERITANCE;

STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN;

WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE.

See MAHOMEDAN LAW—INHERITANCE.

See MALABAR LAW—INHERITANCE

——forfeiture of—

See HINDU LAW—

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE;

WIDOW—DISQUALIFICATION.

—*Inheritance, partial acceptance or renunciation of—Liability of heirs for rent.*—There cannot be a partial acceptance or renunciation of an inheritance, nor can one of several heirs accept a part only of an inheritance, to the prejudice of the other heirs and of the creditors of the deceased. An acceptance in part has the effect of an acceptance of the whole,

INHERITANCE—*concluded.*

and carries with it the same liability. If a person accepts the inheritance, in whole or in part, he is bound to discharge the liabilities which attach to the late tenants from whom he inherits, unless he can prove that he has since made a formal surrender of the holding to the landlord MOAZAM HASSAIN CHOWDHURI *v.* BHOUDDIN (1900)

(5 C. W. N., 169

INITIALS.

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 C. W. N., 447

INJUNCTION.

See LIMITATION ACT, 1877, SCH. II, ART. 42. . . I. L. R., 24 All., 146

See RAILWAY COMPANY.

I. L. R., 27 Bom., 344

See RIGHT TO USE OF WATER

I. L. R., 29 Calc., 100
„ 30 Calc., 281

—— **enforcement of**—

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

I. L. R., 26 Bom., 283

—— **ex parte**—

See BOMBAY CITY IMPROVEMENT ACT.

I. L. R., 27 Bom., 424

—— **right to use of water**—

See EASEMENT . I. L. R., 30 Calc., 1077

—— **to restrain levy of tax**—

See BOMBAY DISTRICT MUNICIPAL ACT (BOMBAY ACT III OF 1901), ss. 82(*c*) AND 86 . I. L. R., 27 Bom., 403

—— **valuation of suit for**—

See COURT-FEES ACT (VII OF 1870), s. 7, CL. IV (*d*) . I. L. R., 24 Mad., 34

1. UNDER CIVIL PROCEDURE CODE.

1.—**Temporary injunction**—*Civil Procedure Code (Act XIV of 1882), s. 493—Specific Relief*

INJUNCTION—*continued.*

1. UNDER CIVIL PROCEDURE CODE—*concluded.*

Act (I of 1877), ss 54, 56, 57—Breach of negative covenant—Plaintiffs advanced money to the defendants for the purpose of carrying on work in certain mica mines, in pursuance of an agreement by which defendants undertook, in consideration of the advance, to send all the mica produced from the mines to plaintiffs, and bound themselves not to send any of it to any firm other than plaintiffs', or keep any in stock. Plaintiffs now complained that defendants had, in breach of their agreement, arranged to consign, and had already made consignments of, mica to [illegible]

Merwanji Panday v Gordon, I. L R., 6 Bom., 266, referred to. SUBBA NAIDU *v.* HAJI BADSHA SAHIB (1902) . . I. L. R., 26 Mad., 168

2.———— *Temporary injunction to restrain suit brought by defendant in the Small Causes Court—Civil Procedure Code (XIV of 1882), ss 492, 493—Specific Relief Act (I of 1877), ss 53, 54 and 56.*—In a suit by plaintiffs in the High Court to recover damages for breach of contract, they sought to obtain an interlocutory [illegible]

temporary or interlocutory injunctions are not the same as those under the Judicature Act, 1873, s. 25, sub-cl. 8. As the injunction asked for is a perpetual one, it can, under the Specific Relief Act, only be granted by the decree made at the hearing. JAIRAMDAS GANESHDAS *v.* ZAMONLAL KISSORILAL (1903) . . . I. L. R., 27 Bom., 357

3.———— *Civil Procedure Code, s 492—Act IX of 1872 (Indian Contract Act), s. 23—Held* that an alienation made pending a temporary injunction under s. 492 of the Code of Civil Procedure is not void under either s. 23 of the Indian Contract Act, 1872, or any other law *Delhi and London Bank, Ld v. Ram Narain (1887), I. L. R., 9 All., 497,* followed. MANOHAR DAS *v.* RAM AUTAR PANDE (1903)

[I. L. R., 25 All., 431

INJUNCTION—*continued.*

2. SPECIAL CASES.

(a) BREACH OF AGREEMENT.

4.—*Civil Procedure Code (Act XIV of 1882), s. 493—Temporary injunction—Specific Relief Act (I of 1877), ss. 54, 56, 57—Breach of negative covenant—Injunction.*—Plaintiffs advanced money to the defendants for the purpose of carrying on

from the mines to plaintiffs and bound themselves

acting
ent; a
ied for
red by
porary
rightly
under
is a

matter of judicial discretion. Whether the principles which govern the grant of a temporary injunction under the Code of Civil Procedure are the same as those which are laid down in the Specific Relief Act relating to the grant of a perpetual injunction—*quære. Nusserwanji Merwanji Panday v. Gordon, I L. R., 6 Bom., 266*, referred to. SUBBA NAIDU *v.* HAJI BADSHA SAHIB (1902) . . . . I. L. R., 26 Mad., 168

(b) BUILDING.

5.—*Temporary injunction—Damages.*—Where a plaintiff sued the defendant for a perpetual injunction restraining him from building a house on a parcel of land alleged to be within the plaintiff's

(c) CUTTING TREES.

6.—*Maxim: Cujus est solum ejus est usque ad cœlum—Question whether common law rights of owner can be limited by religious prejudices of neighbours.*—Certain plaintiffs sued for an injunction restraining defendants from obstructing them in cutting certain branches of a *pipal* tree overhanging

INJUNCTION—*continued.*

2. SPECIAL CASES—*continued.*

(c) CUTTING TREES—*concluded.*

their property. The *pipal* tree grew in the inclosure of a temple, and the resistance was based on the ground that the tree was an object of veneration to Hindus, and that the lopping of its branches would be offensive to the religious feelings of the Hindu community. *Held* that the plaintiffs were entitled to the injunction prayed for, and that the fact that the plaintiffs' action might cause annoyance to a large number of Hindus was not a sufficient ground for cutting down the well-recognized common law rights of an owner of property. BEHARI LAL *v.* GHISA LAL (1902) . . . . I. L. R., 24 All., 499

(d) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.

from erecting a certain door. The plaint also contained a prayer for "such other relief as the Court might think fit." After filing the plaint, the

decree, and remanding the case) that on the suit as framed the Court could grant a mandatory injunction for the removal of the door. The suit was rightly framed in the light of the circumstances which existed when it was brought. It was the defendant's subsequent conduct which rendered it necessary that the plaintiff should be given, as prayed for in his plaint, such other relief as the Court might think fit. MAGANLAL PUNJASA *v.* CHHOTALAL GHELA (1901) . . I. L. R., 26 Bom., 136

8.—Possession of property—*Practice—Procedure—Fact alleged by plaintiff and not denied in defendant's written statement or at hearing—Presumption—Repeated violation of legal right—Damages—Adequate remedy—Specific Relief Act (I of 1877), s. 54.*—In a suit praying for an injunction restraining the defendant from

Repeated violation of an established legal right cannot in ordinary cases be adequately met by damages,

INJUNCTION—*concluded*

2. SPECIAL CASES—*concluded*

(*d*) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY—*concluded*.

nor can these damages be satisfactorily ascertained. APAJI PATIL *v* APA (1902)
[I. L. R., 26 Bom., 735

(*e*) POSSESSION OF JOINT PROPERTY

9.—*Specific Relief Act (I of 1877), s. 54—Judicial discretion of Court—Where the act of the defendant amounts to an ouster of the plaintiff from the possession of the joint property*—In a case where the act of the defendant amounts to an ouster of the plaintiff from the possession of joint-property, pecuniary compensation not being an adequate relief, an injunction would be the proper remedy. [illegible]
I. L. R., [illegible]
GHOSE *v.* [illegible]

3. DISOBEDIENCE OF ORDER FOR INJUNCTION

10. —*Perpetual injunction—Disobedience to order—Contempt of Court—Second suit for injunction—Res judicata—Act XV of 1877 (Indian Limitation Act), Sch. II, Art. 179—Limitation*—Where a plaintiff has once sued for and obtained a perpetual injunction directing the defendant to refrain from certain acts, it is not necessary for the plaintiff, if in future the defendant ignores [illegible] in [illegible]

4. REFUSAL OF INJUNCTION

11.—*Execution—Decree restraining defendant in user of land—Sale of land in execution of another decree—Purchaser at such sale in possession—No execution granted of former decree*—The plaintiff obtained a decree restraining the defendant in his user of certain land, and applied for execution Meanwhile the land had been sold in execution of another decree against the defendant, and the [illegible] obtained possession. The [illegible]

INJURY.

See CRIMINAL INTIMIDATION.
[I. L. R., 30 Calc., 418

See DAMAGES—SUITS FOR DAMAGES—TORT.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—SUBSTANTIAL INJURY.

—— or obstruction to rights of property—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

INQUIRY.

See FURTHER INQUIRY.

—— before granting certificate to collect debts—

See SUCCESSION CERTIFICATE ACT (VII OF 1889), s 7 . . 5 C. W. N., 494

—— as to value of property, before granting probate or letters of administration—

See COURT-FEES ACT (VII OF 1870), s. 19H . . . 6 C. W. N., 898

INSANITY.

See LUNATIC.

1.—Insane delusion—*Unsoundness of mind—Criminal liability, test of—Penal Code (Act XLV of 1860), s 84*—Whether a person who, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is to be therefore excused, depends on the nature of the delusion If he labours under a partial delusion only, and is not in [illegible]

INSANITY—*concluded.*

2.—**Voluntary drunkenness**—*Murder—Unsoundness of mind—Disease brought on by voluntary drunkenness—Criminal liability—Penal Code (Act XLV of 1860), ss. 84, 85 and*

Code, such incapacity is no defence, if produced by voluntary drunkenness. If, however, voluntary drunkenness causes a disease which produces such incapacity, then s. 84 applies, though the disease may be of a temporary nature. EMPEROR *v* BHELEKA AHAM (1902)

[I. L. R., 29 Calc., 493; s.c. 6 C. W. N., 506

INSOLVENCY

———

See APPEAL—ORDERS—

ORDER IN INSOLVENCY;

[I. L. R., 23 All., 56

ORDER REFUSING APPLICATION TO BE DECLARED INSOLVENT.

[I. L. R., 27 Bom., 604

See INSOLVENT ACT (11 & 12 VICT., c. 21).

——**effect of insolvency proceedings in French territory**—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT . I. L. R., 26 Mad., 544

1. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

1.—*Charge on debts—Civil Procedure Code (Act XIV of 1882), s. 372—Devolution of interest of judgment-debtor upon Official Assignee.*—In March, 1897, *B* covenanted to repay by instalments a sum of money owing by him to plaintiff, and mortgaged his stock-in-trade and all outstandings and moneys then due and owing and thereafter to become due and payable to him. *B* remained in possession. In July, 1899, plaintiff sued *B* on the mortgage-deed. In August, 1899, upon an *ex-parte* application by the plaintiff, an order by way of injunction was made in the suit, restraining the mortgagor from disposing of the stock-in-trade and

INSOLVENCY—*continued.*

1. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—*continued.*

outstandings and debts payable to him. This injunction was subsequently dissolved. In the same month plaintiff gave notice to a person indebted to *B* that plaintiff claimed the amount of the debt under his mortgage. In September, 1899, *B* was adjudged an insolvent, and the usual vesting order was made. In October, 1899, plaintiff obtained a decree in his suit, by which it was ordered that *B* should pay the principal and interest due under the mortgage-deed, and that in default of payment the mortgaged premises should be sold. In February, 1900, the person indebted to *B* paid the amount of his debt to the Official Assignee. In September, 1900, an order was made in plaintiff's suit against the insolvent, directing that the decree should be executed by the attachment of the money in the hands of the Official Assignee. In December, 1900, plaintiff applied by summons in his suit against the insolvent for an order that the Official Assignee should pay over that money. *Held* that plaintiff was not entitled to the order. The decree, as a mortgage decree directing the sale of the chattels,

have him joined as a party to the suit. *Miller* v. *Budh Singh Dudhuria, I. L. R., 18 Calc., 43,* referred to. PUNINTHAVELU MUDALIAR *v.* BHASHYAM AYYANGAR (1901)

[I. L. R., 25 Mad., 406

2.—*Act for the Relief of Insolvent Debtors (11 & 12 Vic., c. 21), s. 7—Vesting order, effect of—Prior attachment by a judgment-creditor—Attachment, effect of—Civil Procedure Code (Act XIV of 1882), s. 295—Civil Procedure Code (Act VIII of 1859), s. 270*—A judgment-creditor has no priority over the Official Assignee in respect of property attached by him previous to the passing of the vesting order. *Soobul Chunder Law* v. *Russick Lall Mitter (1888), I. L. R., 15 Calc., 202,* approved. *A. B. Miller* v. *Lakhimoni Debi (1901), 5 C. W. N., 761,* overruled. *Anand Chandra Pal* v. *Panchi Lal Sarma (1870), 5 B. L. R., 691,* and *Shib Kristo Shaha Chowdhry* v. *Kishen Chand Goleeha (1883), I. L. R., 10 Calc., 150,* distinguished. An attachment does not confer any title; it merely prevents alienation. *Moti Lal* v. *Karrabuldin (1897), I. L. R., 25 Calc., 179,* referred to. PEACOCK *v.* MADAN GOPAL (F.B., 1902)

[6 C. W. N., 577; s.c., I. L. R., 29 Calc., 428

INSOLVENCY—*continued*

1. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—*concluded.*

3.—*Civil Procedure Code (Act XIV of 1882), ss. 268, 493—Attachment of money before judgment—Decree—Subsequent insolvency of judgment-debtor—Claim of Official Assignee—Priority of Official Assignee.*—The effect of an attachment under the Code of Civil Procedure is to prevent alienation. It does not confer title. An order of attachment under s. 268 only operates so as to give the judgment-creditor certain rights in execution. It does not operate, when those rights are not exercised before the presentation of a petition ... favour of the judg-

effect as against him, and asking that it ... be set aside. *Held* that the Official Assignee was entitled to the order asked for. KRISTNASAWMY MUDALIAR *v.* OFFICIAL ASSIGNEE OF MADRAS (1903) . . . I. L. R., 26 Mad., 673

2. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

4.—Application for declaration of insolvency—*Civil Procedure Code, s. 344—Who may apply for declaration of insolvency—Judgment-debtor arrested or imprisoned.*—*Held* that s. 344 of the Code of Civil Procedure does ... debtor who

... 4

5.—Arrest—*Civil Procedure Code (Act XIV of 1882), ss. 336, 344—Arrest of judgment-debtor—Petition under s. 366—Release on furnishing security to apply to be declared insolvent within a month—Failure to apply within that time—Subsequent application under s. 344—Maintainability.*—A judgment-debtor, who had been arrested, was released under s. 366 of the Code of Civil Procedure on furnishing security that he would, within one month, apply to be declared an insolvent. The month passed, and he failed to make the application. He was not arrested again, and, at a subsequent date, applied under s. 344 to be declared an insolvent. *Held* that he was entitled to do so. ALAGAPPA CHETTI *v.* SARATHAMBAL (1902) . . . I. L. R., 25 Mad., 724

INSOLVENCY—*continued.*

2. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*continued.*

6.—Examination of insolvent—*Civil Procedure Code (Act XIV of 1882), ss. 345, 346 and 350.*—The examination of an insolvent under s. 350, Civil Procedure Code, is only necessary where the judgment-debtor is declared an insolvent upon his own application, not where he is adjudicated an insolvent at the instance of the judgment-creditor. GOURI KANT BURMAN *v.* DAMODAR DAS BURMAN (1900) . . . . . 5 C. W. N., 90

7.—Notice of insolvency—*Civil Procedure Code (Act XIV of 1882), ss. 347, 350, 351, 353 and* ... *posting;*

claim by a—Onus of proving claim when so required under s. 353, Civil Procedure Code—Receiver in insolvency, purchase by.—The provision of s. 347 with regard to posting up the notice of

... judgment-creditor. An adjudication order can only be set aside on the ground that it has been obtained by a fraudulent representation of indebtedness in favour of the creditor, who has obtained the order when there is no debt whatsoever, or for want of jurisdiction. When charges of fraud and collusion are made, they must be put in a sufficiently specific manner to enable the other side to combat them. *Wallingford* v. *The Mutual Society (1881), 5 App. Cas., 697*, and *Ganga Narain Gupta* v. ...

... C. W. N., ...

8.—Schedule—*Execution of decrees—Civil Procedure Code (Act XIV of 1882), s. 357—Debt not included in the Schedule—Insolvent debtor, discharge of—Right of creditor, not in the Schedule ... the discharged insolvent's property—*

INSOLVENCY—*concluded.*

2. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*concluded.*

the Code of Civil Procedure, is entitled to proceed

vested in a Receiver, he having taken insolvency proceedings, the execution could not be carried on, the Court released from attachment the salary of the

case was governed by Art. 17… Sch. II of the Limitation Act, an … in continuation … having been … when the decree-holder became entitled to ask the

such decree was that provided for by Art. 178, Sch.

Ahsan (1894), I. L. R., 16 All., 237, referred to. ASHRAFUDDIN AHMED *v.* BEPIN BEHARI MULLICK (1902) . . . . I. L. R., 30 Calc., 407

INSOLVENT ACT (11 & 12 VICT., c. 21).

1.—**Priority of Official Assignee**—*Decree, attachment in execution of—Vesting order—Official Assignee—Priority of claim—Civil Procedure Code (Act XIV of 1882), s. 244—Whether Official Assignee is the representative of the judgment-debtor.*—A vesting order made under the Insolvency Act (11 & 12 Vict., c 21) has not the effect of giving the Official Assignee priority over the claim of a judgment-creditor in respect of property attached, at his instance, previous to the

INSOLVENT ACT (11 & 12 VICT., c. 21) —*continued.*

passing of such order. *Anund Chunder Pal v.*

[I. L. R., 28 Calc., 419; s.c., 5 C. W. N., 761

2.—**Second insolvency**—*Insolvency—Second insolvency where insolvent has not got final discharge under the first—Duty of serving notices, when on the insolvent and when on the creditors—Practice—Procedure.*—A person may become insolvent a second time before he has received his final discharge under the first insolvency. *Morgan v. Knight (1864), 33 L. J. (C. P.), 168,* followed. The appellant had been adjudicated an insolvent at the instance of a creditor, under s. 9 of the Indian Insolvent Act (11 & 12 Vict., c. 21), on the 21st January, 1898. On the 4th October, 1900, one of his creditors obtained a rule calling upon the insolvent to show cause why he should not forthwith proceed with the matter. The Commissioner made the rule absolute, and directed the insolvent forthwith to proceed with the matter of his insolvency. On appeal: *Held* that the order of the lower Court should be reversed, and the rule discharged. When a person himself files a petition in insolvency, he has the carriage of it. He must serve notices on the creditors at his own expense, and bring the petition to a hearing. But when a person has been adjudicated an insolvent at the instance of a creditor, it is

——s. 7—

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE. [6 C. W. N., 577

——ss. 7 and 30—

1.—*Ancestral trade carried on by brothers in undivided family—Insolvency and discharge of all the adult members—Minor son of one brother not a party to insolvency proceedings—Order vesting family property in Official Assignee—Sale by Official Assignee of land so vested—Subsequent suit against minor—Sale of his interest in the land—Validity.*—Seven brothers who carried on a business (which had previously been conducted by their family for very many years) applied to be adjudged insolvents in the Court for the relief of insolvent debtors in Madras. They comprised all the adult members of the family at the time when the application was made, and all the debts included in their schedule had been incurred in connection with the family business. *A*, being a son of one of them and a minor at the time, was not a party to the insolvency proceedings. The applicants in due course

INSOLVENT ACT (11 & 12 VICT., c. 21) —*continued*

—— **ss. 7 and 30**—*continued*

obtained their discharge, and an order was passed vesting their property (which included land) in the Official Assignee in Madras. At a date subsequent to that of the vesting order, plaintiffs purchased

brought to sale and purchased by *B*. Upon a suit being brought by plaintiffs for a declaration that the purchase by *B* was inoperative and void by reason of the prior sale to plaintiffs by the Official Assignee: *Held* that plaintiffs were entitled to the declaration. *Held, also*, that, inasmuch as the trade was an ancestral one (and not one commenced by the managing members during the minority of *A*), and as the scheduled debts were incurred in the course of such trade, and all the adult members had applied

or the existence of family necessity. In cases in which s 7 of the Indian Insolvent Debtors Act applies, the vesting order vests in the Official Assignee only the real and personal estate and effects of

considered NUNNA BRAHMAYYA SETTI *v* CHIDARABOYINA VENKITASWAMY (1902)

[I. L. R., 26 Mad., 214

2.—*Provident Funds Act (IX of 1897), s. 4—Insolvent Debtors' Act (11 & 12 Vict., cap. 21), ss 7, 30—Vesting order—Sum due to an insolvent from a provident institution—Right of Official Assignee to claim—Construction of statutes—Distinction between enactments affecting vested rights and those regulating procedure*.—A member of a Railway Provident Institution, who had made compulsory deposits therein, became insolvent, and the usual vesting order was made under s. 7 of the Act for the Relief of Insolvent Debtors By the rules of that institution, a member is to be paid, on

INSOLVENT ACT (11 & 12 VICT., c. 21) —*continued.*

—— **ss. 7 and 30**—*concluded.*

into force the interest of the insolvent in the Fund had become vested in the Official Assignee: *Held* that, by s. 4 of the Provident Funds Act, all the right and title of the Official Assignee was determined

affect procedure, recognised. *Javanmal Jitmal* v. *Muktabai, I L. R., 14 Bom, 516*, referred to. Under s. 7 of the Insolvent Debtors Act, the right of the insolvent to be paid the sum standing to his credit in the Fund, on his retirement from service, vested in the Official Assignee. OFFICIAL ASSIGNEE OF MADRAS *v*. DALGAIRNS (1902)

[I. L. R., 26 Mad., 440

—— **s. 8**—

—*Adjudication of insolvency—Who is entitled to apply for order of adjudication—Condition necessary for adjudication under section 8—Practice—Procedure*.—The only person who can obtain an order adjudicating another person insolvent under s. 8 of the Indian Insolvent Act (11 & 12 Vict, c. 21), on the ground of his lying in prison for twenty-one days in execution of a decree, is the creditor in execution of whose decree he has been in prison. A debtor cannot be adjudicated an insolvent under s. 8 of the Indian Insolvent Act (11 & 12 Vict, c. 21) on the ground of his lying in prison for twenty-one days, unless he is in prison at the time the petition for adjudication is presented or at the time it is heard. IN RE AHMED ISMAIL MUNSHI (1902)

[I. L. R., 26 Bom., 649

—— **s. 9**—

—*Insolvency—Trust deed for benefit of creditors—Act of insolvency*.—An assignment by ... all his ... 9 of the ... 21), and ... under ... GANLAL KANKUCHAND (1902) . I. L. R., 26 Bom., 476

—— **ss. 9 and 24**—

—*Insolvency—Composition deed—Assignment of all property for benefit of creditors—Act of insolvency—Assignment void against Official Assignee*.—By a composition deed dated the 7th October, 1901, *A* and *B* assigned the whole of their ... their ... deed ... This ... *anlal (1902), I. L. R., 26 Bom., 476*, to be an act of insolvency under s 9 of the Indian Insolvent Act (11 & 12 Vict., c. 21), and, on the 11th December, 1901, *A* and *B* were adjudged insolvents on the application of certain creditors who had not signed the said deed. *Held* that, even assuming

INSOLVENT ACT (11 & 12 VICT., c. 21) —*continued.*

——**ss. 9 and 24**—*concluded.*

that the deed of assignment was not voluntary within the meaning of s. 24 of the Indian Insolvent Act, nevertheless the assignment to the trustees was void as against the Official Assignee. MANMOHANDAS RAMJI *v.* MACLEOD (1902)

[I. L. R., 26 Bom., 765

— **s. 13**—

See ARREST—CIVIL ARREST.

[I. L. R., 26 Bom., 652

——**s. 23**—

1.—Reputed ownership—*Insolvency—Property subject to mortgage in possession of insolvent at date of insolvency—Reputed ownership—Fixtures—Goods and chattels—Registration of mortgage—Registration Act (III of 1877), s. 17.*—On the 23rd June, 1893, one Vishram Meghji, the owner of a flour mill ...

... Rs.,000 then advanced, and power was given to the plaintiff to sell the same in default of payment. In March, 1899, Vishram Meghji became insolvent, and his estate thereupon vested in the Official Assignee. The plaintiff claimed the mortgaged property, but the Official Assignee contended that under s. 23 of the Indian Insolvency Act (11 & 12 Vict., c. 21) he was entitled to it as property which with the consent of the true owner was in the possession, order or disposition of the insolvent at the date of insolvency. The property was sold by consent, and the plaintiff brought this suit to recover the proceeds. From the evidence it appeared that the greater portion of the mortgaged property consisted of articles fixed to various parts of the flour mill or of the machinery therein. *Held,* as to the articles not so fixed, that the plaintiff was not the true owner of these, and that they were not therefore within the section, and passed to the Official Assignee. ...

... ownership within the section. The plaintiff was therefore entitled to them, or to such portion of the proceeds of sale as represented their value. It was ...

INSOLVENT ACT (11 & 12 VICT., c. 21) —*continued.*

——**s. 23**—*concluded.*

chattels within the rules of reputed ownership laid down in s. 23 of the Indian Insolvency Act (11 & 12 Vict., c. 21). The fact of such fixtures being removable by a tenant makes no difference. They are still fixtures to which the doctrine does not apply. MACLEOD *v.* KIKABHOY KHUSHAL (1901) . . I. L. R., 25 Bom., 659

2. ——————Where a debtor has assign- ... the person ... order or dis- ... OLD WHITE, *C.J.*—A chose in action, if it is a debt due to the insolvent in his trade or business, comes within the words "goods and chattels" as contained in s. 23 of the Indian Insolvent Debtors Act. *Per* BHASHYAM AYYANGAR, *J.*—The instrument only ...

... circumstances ... owner and ... thereby, he ... substantial ... against the ... the order ... be brought to enforce a charge upon the debt prior to his adjudication. PUNINTHAVELU MUDALIAR *v.* BHASHYAM AYYANGAR (1901)

[I. L. R., 25 Mad., 406

——**s. 24**—

See ante, SS. 9 AND 24.

——**ss. 26 and 36**—

—*Construction.*—The words "and it shall be also lawful for the Court, on those or any other occasions", in s. 36 of the Insolvent Debtors Act (11 & 12 Vict., c. 21), are intended to receive a very wide application, and the Court has power to proceed under this section as soon as there is an insolvent. Under s. 26 of the same Act, no rule should be granted except on the application of the assignee or an admitted creditor. *In the matter of Bucktwar Chand (1896), 1 C. W. N., 329,* followed. No one can be regarded as a creditor until his name is admitted to the schedule, or until he establishes it there. IN THE MATTER OF CHUNI LAL OSWAL (1902)

[I. L. R., 29 Calc., 503

——**s. 30**—

See ante, SS. 7 AND 30.

——**s. 36**—

See ante, SS. 26 AND 36.

See PRACTICE—CIVIL CASES—COUNSEL.

[I. L. R., 29 Calc., 50

INSOLVENT ACT (11 & 12 VICT., c. 21) —*concluded.*

——s. 40—

—*Insolvency—Proof of claim by creditor against insolvent—Time within which such proof to be made—English rules not applicable—English Bankruptcy Act, 1883 (46 & 47 Vict., c 52)* [illegible] became insolvent and filed [illegible] schedule [illegible] as a [illegible] either prove or dispute this amount in his lifetime, and he died in May, 1897, leaving a will of which the applicants were executors. In 1898 a dividend on the insolvent's estate was declared and paid, but no claim on behalf of the deceased Jehangir Hormasji Mody was sent in by his executors. Subsequently the executors put in a claim, on behalf of their testator as creditor in the insolvent's estate, for R87,881. On the 18th July, 1901, the Official Assignee disallowed this claim. The executors, on the 19th February, 1902, applied to the Court that the claim should be admitted. The Official Assignee contended that the application was too late; that under s. 40 of the Indian Insolvent Act the rules framed under the English Bankruptcy Act of 1883 were applicable to India; and that under these rules (Rule No. 230) the applicants should have appealed, against his order disallowing the claim, [illegible] merits by the Commissioner in Insolvency. IN RE KALIDAS KESHOWJI (1902)
[I. L. R., 26 Bom., 623

——ss. 47 and 50—

—*Offence under s. 50 a criminal offence—Charge, etc., must be framed to sustain conviction and sentence—Opposing creditor—Grounds of opposition should be stated in clear terms—Practice—Procedure*—Insolvents were found guilty, under s. 50 of the Indian Insolvent Act, of wilfully preventing or purposely withholding the production of certain papers relating to their affairs, and sentenced to three months' imprisonment. *Held* that the proceedings, so far as they resulted in imprisonment, amounted to a criminal case. *Held,* [illegible] hearing. IN RE VALLABHDAS JAIRAM (1903)
[I. L. R., 27 Bom., 394

——s. 73—

See COURT-FEES.
[I. L. R., 24 Mad., 160

INSOLVENT DEBTOR.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

INSPECTION OF DOCUMENTS.

——civil cases—

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.

INSTALMENTS.

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.
[I. L. R., 27 Bom., 21

See LIMITATION—QUESTION OF LIMITATION . . . 6 C. W. N., 348

See LIMITATION ACT, 1877, SCH. II, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES.
[I. L. R., 27 Bom., 1

——decree or money payable by—

See EXECUTION OF DECREE—

MODE OF EXECUTION—INSTALMENTS;

EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES
[I. L. R., 29 Calc., 810

——repayment of loan by—

See TRANSFER OF PROPERTY ACT, s. 83.
[I. L. R., 24 All., 461

INSULT.

See MISCHIEF . I. L. R., 24 All., 155

INSURANCE.

——*life*—

See STAMP ACT (II OF 1899), SCH. I, ART. 47, CL. D_4. I. L. R., 25 Bom., 376

——marine—

See BILL OF LADING.
[I. L. R., 30 Calc., 565

See CONTRACT ACT, ss. 20, 30 AND 65
[I. L. R., 25 Mad., 561

LIFE INSURANCE.

—*Policy of life insurance—Warranty—Age of assured—Misstatement of age—Onus of proof—Contract Act (IX of 1872), s. 65—Return of premium paid on policy subsequently held void—Evidence Act (I of 1872), s. 32 (5)—Statement as to age of a member of a family by another member since deceased—Admissibility*—In August, 1898, *V* signed a proposal form, addressed to the

INSURANCE—*continued.*

LIFE INSURANCE—*continued.*

defendant company, for a policy of insurance for a sum of money payable at his death. In it *V* gave the date of his birth as corresponding to 7th August, 1840, and stated that he would be fifty-eight next birthday, and declared that the particulars given therein were correct. On or about the same date, *V* also signed a "personal statement," which, after answering numerous questions, concluded with the following declaration—"I . . . . do solemnly declare that, according to the best of my knowledge and belief, I am now in good health . . . . , and that my age does not exceed fifty-eight years . . . . and that I have fully and faithfully answered all such questions as have been put to me in the form of proposal and by the medical referee relative to my habits, constitution and general state of health, without concealment or reservation of any kind, . . . and I hereby covenant and agree that this declaration shall be the basis of the contract between myself and the company, and if any untrue averment be contained herein, or if any of the facts required to be set forth in the proposal and in the medical examination be not truly stated, all moneys which shall have been paid upon account of the assurance made in consequence hereof shall be forfeited and the assurance itself be absolutely null and void." In September, 1898, the defendant company issued a policy for the sum proposed for, which recited that *V* had delivered a statement in writing declaring, *inter alia*, that his age on his next birthday would not exceed fifty-eight years, and contained the proviso that the policy was issued upon the express condition that in case any statement or allegation contained in that declaration should be untrue, or if the assurance thereby made

representations as to the age, means and circumstances of the assured. The evidence showed that the age of the assured was from three to four years greater than he had declared it to be. *Held* that the defendants were not liable on the policy. *Held also* that the plaintiff was not entitled, under s. 65 of the Contract Act, to a refund of premia paid on the policy during the lifetime of the assured. In the "personal statement" referred to, the assured had omitted to

dered void by this omission. *Per* Sir Arnold White, C.J.—The declaration contained in the "personal statement," being ambiguous, should be construed in favour of the assured, and amounted only to a warranty that the age of the assured was fifty-eight to the best of his knowledge and belief; but this statement of age by the assured was, in fact, an

INSURANCE—*concluded.*

LIFE INSURANCE—*concluded.*

untrue statement, and untrue to his knowledge and belief. The statement was in the nature of a warranty,

consider was, not the materiality or otherwise of that statement, but its truth. The clause in the personal

I. L. R., *20 Bom.*, *99*, referred to. Oriental Government Security Life Assurance Company *v.* Narasimha Chari (1901)
[I. L. R., 25 Mad., 183

INTENTION.

See Criminal Trespass

See Kidnapping . 6 C. W. N., 208

——**dishonest**—

See Criminal Misappropriation.
[6 C. W. N., 34

See Forgery.

——**malicious**—

See Defamation.
[I. L. R., 30 Calc., 402

INTENTION—*concluded.*

——to defraud—

See CHEATING . . 5 C. W. N., 255

INTENTION OF PARTIES.

See EVIDENCE—PAROL EVIDENCE—EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES

See LIFE ESTATE . 5 C. W. N., 569

INTEREST.

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE . . 5 C. W. N., 137

See HINDU LAW—USURY.

See MORTGAGE—

CONSTRUCTION—USUFRUCTUARY MORTGAGE;

[L. R., 29 I. A., 148

REDEMPTION—

REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM;

[I. L. R., 26 Bom., 643

MISCELLANEOUS CASES

[I. L. R., 27 Bom., 23

——effect of stipulation for payment of—

See VENDOR AND PURCHASER—MISCELLANEOUS CASES . 6 C. W. N., 192

——foreign judgment—

See FOREIGN COURT, JUDGMENT OF.

[5 C. W. N., 741

——on mortgage-decree, to date of realisation—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R., 30 Calc., 953

INTEREST—*continued.*

——payment of—

See LIMITATION ACT, 1877, S. 20.

[I. L. R., 29 Calc., 647

1. MISCELLANEOUS CASES.

(i) ACCOUNTS.

1.—*Barred item—Interest not allowed on barred item of account.*—In an account, interest cannot be allowed on items that are barred by limitation. Interest is but an accessory, and when the principal is barred the accessory falls along with it. DHONDIRAM BIN LAXMON *v.* TARA SAVADAN (1902)

[I. L. R., 27 Bom., 330

(ii) ARREARS OF RENT.

2.—**Bengal Tenancy Act**—*Bengal Tenancy Act (VIII of 1885), ss. 61, 67—Tender*—Where rent was tendered to plaintiff's am-muktear, but plaintiff refused to accept the same. *Held* that defendant was liable to pay interest on the arrears, in spite of such tender, as he omitted to follow the procedure prescribed by s 61 of the Bengal Tenancy Act. RANSGIT SINGHA *v.* BHAGABUTTY CHARAN ROY (1900) . . . . 7 C. W. N., 720

3. ———— *Bengal Tenancy Act (VIII of 1885), ss. 67, 178 (3) (h)—Landlord and tenant—Interest on arrears—Rate of interest specified in lease—Ordinary incidents of holding—Holding over after expiry of lease*—An agricultural tenant held under a lease for six years, the term of which expired in 1881, and had been holding ever since. The rate of interest specified in the lease was 75 per cent. per annum. The landlord sued for rent for the years 1893 to 1895 and part of 1896, with interest at the rate specified in the lease. *Held* that, under the provisions of the Bengal Tenancy Act, the plaintiff could not recover interest at a rate higher than 12 per cent. per annum. ADMINISTRATOR GENERAL OF BENGAL *v* ASRAF ALI (1900) . . . . I. L. R., 28 Calc., 227

4. ———— *Landlord and tenant—Bengal Tenancy Act (VIII of 1885), ss. 67, 74, 178 (3)(h), 179—Rate of interest—Permanent tenure—Interpretation of statute.*—*Held* by the majority of the Full Bench (AMEER ALI, J., dissenting) that s 67 of the Bengal Tenancy Act does not control the provisions of s. 179 of that Act, and that therefore a contract for the payment of interest on arrears of rent, entered into by a landlord and a permanent tenure-holder under him, is enforceable by law, although it may contravene the provisions of s 67 of the Bengal Tenancy Act *Basanta Kumar Roy Chowdhry v. Promotha Nath Bhuttacharyee (1898), I. L. R., 26 Calc., 130*, overruled. MATANGINI DEBI *v* MOKRUBA BIBI (F.B., 1901)

[I. L. R., 29 Calc., 674;
s.c., 5 C. W. N., 438

5. ———— *Landlord and tenant—Purchaser, if liable to pay interest stipulated in*

INTEREST—*continued.*

1. MISCELLANEOUS CASES—*continued.*

(ii) Arrears of Rent—*concluded.*

the kabuliyat of the original tenant—Incident of tenancy—Bengal Tenancy Act (VIII of 1885), s. 67.—A stipulation for payment of interest upon arrears of rent is an ordinary incident of tenancy in this country, unless there is something unusual in the stipulation; and as a rule it attaches to the tenancy, so that a purchaser of the tenancy will also be bound by the stipulation. When a tenure is advertised for sale in execution of a decree for arrears of rent, it is not necessary for the decree-holder to specify the rate of interest in the sale proclamation. Where in a lease the stipulation was that the lessee should pay a sum of ten rupees in default of delivery to the landlord of a certain quantity of molasses: *Held* that it was merely a personal covenant by the lessee. *Also* that, the rent mentioned in the sale proclamation not having included this sum, the auction-purchaser was not bound to pay it. Rajnarain Mitra *v.* Panna Chand Singh (1902) . 7 C. W. N., 203; [s.c. I. L. R., 30 Calc., 213

(iii) Arrears of Revenue.

6.—*Assignee of Government revenue—Interest on arrears—Act XII of 1881 (N. W. P. Rent Act), s. 93 (i)—Act XVIII of 1873 (N. W. P. Land-revenue Act), s. 148.*—*Held* by Banerji and Aikman, JJ., that an assignee of Government revenue cannot sue for interest on arrears. *Bithal Das* v. *Harphul (1884), I. L. R., 6 All., 503,* referred to. Chandi Prasad *v.* Mahendra Mahendra Singh (1900) . I. L. R., 23 All., 5

(iv) Bill of Exchange.

7.—*Agreement to pay interest—Evidence, admissibility of—Promissory note—Civil Procedure Code (Act XIV of 1882), Ch. XXXIX, s. 532.*—In a suit instituted under Ch. XXXIX of the Civil Procedure Code (Act XIV of 1882), the plaintiff is not entitled to recover any interest unless such interest is specified in the promissory note

[I. L. R., 30 Calc., 446; s.c., 7 C. W. N., 412

(v) Bond.

8.—*Compound interest—Unconscionable bargain.*—One Sami-ud din Ahmad Khan, on the 10th of November, 1892, borrowed from Kirpa Ram and Ghasi Ram R900, for which he gave a bond bearing compound interest at R2 per cent. per mensem, with monthly rests, and mortgaging a 10- ... house in ... ne of the ... years of ... 13th of ... bond to ... ceeds of

INTEREST—*continued.*

1. MISCELLANEOUS CASES—*continued.*

(v) Bond—*concluded.*

the sale of the mortgaged share which had taken place in execution of a decree on a prior mortgage. The Court of first instance gave the plaintiff a decree, but allowed only simple interest at the rate stipulated for in the bond. On appeal the High Court sustained the lower Court's order as to the interest, holding that the bargain was an unconscionable bargain against which that Court had properly relieved the defendant ...

Ram *v.* Sami-ud-din Ahmad Khan (1903) [I. L. R., 25 All., 284

(vi) Compound Interest.

9.—*Interest Act (XXVIII of 1855), s. 2—Interest—Compound interest—Hard and unconscionable bargain.*—Where, in a bond, the principal was a small sum of R300 and the interest was compound interest at the rate of five rupees per mensem with monthly rests, and the contention of the defendant was that the bargain was a hard and unconscionable one: *Held* that, there being no

(vii) Damages.

10.—The Court may, in a proper case, award interest by way of damages. *Lala Chhajmal Das* v. *Brij Bhukan Lall (1895), L. R., 22 I. A., 199,* referred to. Jogeshur Bhagat *v.* Ghanashan Dass (1901) . . . 5 C. W. N., 356

(viii) Mesne Profits.

11.—*Mesne profits, interest on—Civil Procedure Code (Act XIV of 1882), s. 211.*—Regard being had to the provisions of s. 211 of the Civil Procedure Code (Act XIV of 1882) in the ascertainment of mesne profits due to the decree-holder, he is entitled to receive interest, year by year, on the amount found to be due. *Hurro Durga Chowdhrani* v. *Surut* ... distingu... Moti ...

12.—*Execution of decree—Interest on mesne profits—Date from which such interest accrues.*—*Held* that the term "mesne profits" includes interest on such mesne profits, and that the interest accrues from the date upon which each instalment of the mesne profits may become due. *Grish Chander Lahiri* v. *Shosi Shikhareswar Roy (1900), I. L. R., 27 Calc., 951,* followed. Narpat Singh *v.* Har Gayan (1903) . I. L. R., 25 All., 275

INTEREST—*continued*

1. MISCELLANEOUS CASES—*concluded.*

(ix) Money lent.

13.—*Interest Act (XXVIII of 1855), s 2—Exorbitant rate of interest*—B borrowed money

[I. L. R., 29 Calc., 823

(x) Mortgage

14.—*Mortgage decree, construction of—Date of payment, meaning of.*—There is nothing in the law to prevent interest at the rate stipulated on a bond being decreed up to the date of actual payment. Where a mortgage-decree provided for interest to be recovered from the date of the decree till the date of payment: *Held* that the words

15.—*Interest up to date of payment—Interest at stipulated rate—Redemption—Subsequent interest—Transfer of Property Act (IV of 1882) ss. 88, 89—Civil Procedure Code (Act XIV of 1882), s 209, and Sch IV, Form 109—Belchambers' Rules and Orders, 476, 477 and 605—Force of the rules—Ultra vires—Practice*—Where a mortgage deed provides for interest up to the date of payment, interest will be allowed at the stipulated rate for the six months allowed for redemption, and at the Court rate from that date up to the date of payment. The decree for interest after the time allowed for redemption in accordance with Rule 605 (Belchambers' Rules and Orders) is a decree for payment of money. Rule 605 (Belchambers' Rules and Orders) is not *ultra vires* *Bakar Sajad* v. *Udit Narain*

(1902) [6 C. W. N., 769

INTEREST—*continued.*

2 WHERE NO STIPULATION FOR, OR STIPULATED TIME HAS EXPIRED.

Decree.

16—*Interest at contract rate up to the date fixed by Court for payment of mortgage money*—

[I. L. R., 29 Calc., 43

3 STIPULATIONS AMOUNTING OR NOT TO PENALTIES

17.—Contract Act, s. 74—*Enhanced rate of interest on failure to pay on due date—Penalty—Mortgage—Compound interest at a rate higher than that of simple interest—Interest at contract rate up to the date fixed by Court for payment of mortgage-money—Subsequent interest at rate to be fixed by Court*—A provision in a bond to the effect that the principal should be repaid with interest on the due date, and that on failure thereof interest should be paid at an increased rate from the date of the bond, amounts to a provision for a penalty, and, under the terms of s 74 of the Contract Act, reasonable compensation should be allowed. *Kalachand Kyal* v. *Shib Chunder Roy (1892), I. L. R., 19 Calc., 392*, followed *Chajmal* v.

the contract rate should be allowed up to the date fixed by the decree for the repayment of the money due, and after that date at such rate as the Court may fix. *Romeswar Koer* v. *Mahomed Mehdi Hossein Khan (1898), I. L. R., 26 Calc., 39*; *Maharaja of Bharatpur* v. *Ram Kanno Dei (1900), L. R., 28 I. A., 35*; *Bakar Sajjad* v. *Udit Narain Singh (1899), I. L. R., 21 All., 361*, referred to RAMESWAR PROSAD SINGH v. RAI SHAM KISHEN (1901)

[I. L. R., 29 Calc., 43

18.—————*Usury Laws Repeal Act (XXVIII of 1855), s 2—Contract Act Amendment Act (VI of 1899), s 4—Penalty—Principal sum, bearing no interest, repayable by instalments—Provision for interest in case of default.*—Defendant was indebted to plaintiff, as the stake-holder of a "chit fund," and undertook to pay the amount of the principal by half-yearly instalments. He further undertook that, in case of default in the

INTEREST—*continued.*

3. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued.*

payment of such instalments, he would pay interest at the rate of one pie per rupee per diem from the date of default. No interest was payable on the principal sum unless default should be made, the instalments being in repayment of the principal sum alone, without interest. Default having been made, plaintiff sued on the bond, whereupon defendant pleaded that the rate of interest was penal and not recoverable. *Held* that plaintiff was entitled to recover The contract was not one which provided

His liability to pay interest only arose in the event of default. The case was not governed, therefore, by the Contract Act of 1872, or the Contract Act Amendment Act of 1899. *Per* SIR ARNOLD WHITE, *C J* —Under the Contract Act of 1872, a stipulation that an enhanced rate of interest should be payable as from the date of default is not a stipulation by way of penalty The Explanation to s 4 of the Contract Act of 1899, which provides that a Court may

19. ———————— *Mortgage bond—Penalty—Increased rate of interest from date of default—Act VI of 1899, s 4*—A stipulation in a bond, for increased interest from the date of default, may be a stipulation by way of penalty, and the Courts in this country are competent to grant equitable relief against such stipulation, independently of *s* 74 of the Contract Act. ABDUL GANI *v.* NANDLAL (1902) . . I. L. R., 30 Calc., 15

20. ———————— *Increased interest on default—Interest, provision for, in a bond—Penalty.*—Where, in a bond executed on the 1st December, 1888, the stipulation was that interest would run at the rate of 1¼ per cent per mensem,

sent back for consideration by the Court below, from the point of view that the provision as to increased interest might be penal, or that relief might be granted on equitable grounds *Also* that, if the provision as to increased interest be not strictly enforce-

INTEREST—*continued.*

3. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued.*

able, reasonable compensation should be granted to the plaintiff. *Umar Khan Mahmad Khan Desh-*

21. ———————— *Bond—Instalments—Failure to pay instalments—Interest at a higher rate from the date of the transaction—Penalty.*—Defendants borrowed a sum of R200 from the plaintiffs and gave a bond, dated the 12th December, 1879, for R250, repayable by monthly instalments of R5. The bond provided that, in case of default in payment of any instalment, interest at 24 per cent. per annum should be charged from the date of the bond The sum of R203-2-9 was paid by defendants up to the 9th July, 1884, after which date no payments were made. The plaintiffs claimed interest from the defendants at the rate of 24 per cent., calculated from the date of the bond. *Held* that the provision in the bond, that on default interest at 24 per cent. per annum should be charged from the date of the bond, was in the nature of a penalty; and that the amount claimed could not be recovered. TRIMBAK TUKARAM NAIK *v.* BHAGCHAND (1902) . . I. L. R., 27 Bom., 21

22. ———————— *Act VI of 1899, s 4—Stipulation for enhanced interest and for compound interest in case of default—Penalty*—A bond stipulated for the payment, on a specified date, of half the principal sum advanced, together with interest at the rate of 15 per cent. per annum, and for the payment, on another date, of the balance of the principal, together with interest at the same rate. In case of default in the payment of either instalment, it was provided that the whole amount of

Court awarded no compensation. *Held* that, inasmuch as by s. 74 of the Contract Act (as amended) the Court is to award reasonable compensation not exceed-

VEERABADRAM CHETTY (1902)

I. L. R., 26 Mad., 111

23. ———————— *Penalty—Stipulation that interest shall be chargeable if instalments in repayment of principal be not paid at due dates—Applicability of Act VI of 1899 to suits filed prior to its coming into force*—A stipulation

INTEREST—*concluded.*

3. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*concluded.*

in a bond that the principal sum shall be repaid by instalments on specified dates (no provision being made for interest) and that, on default of such payments of principal being made, interest shall be chargeable as from the date of the bond, is not in the nature of a penalty. *Semble* that the Contract Act Amendment Act of 1899 *does not apply to a suit filed* prior to the date upon which it came into force. CHINNA VENKATASAMI *v.* PEDDA KONDIAH (1902)
[I. L. R., 26 Mad., 445

24. ———— ———— *Act VI of 1899 (Indian Contract Act Amendment Act), s. 4—Bond—Penalty.—Held* that a stipulation in a bond for payment of compound interest on failure to pay simple interest on the same amount is not a penalty within the meaning of s 74 of the Indian Contract Act, 1872, as amended by Act VI of 1899. GANGA DAYAL *v.* BACHCHU LAL (1902)
[I. L. R., 25 All., 26

25. ———— *Penalty — Compound interest in lieu of simple—Act VI of 1899, s. 4—Held,* following the ruling in *Ganga Dayal* v. *Bachchu Lal (1902), I. L. R., 25 All., 26,* that a stipulation for the payment of compound interest at the same rate as was payable upon the principal is not a stipulation by way of penalty, within the meaning of the Explanation to s. 74 of the Indian Contract Act, 1872 JANKI DAS *v.* AHMAD HUSAIN KHAN (1902) . . . I. L. R., 25 All., 159

26. ———— *Act VI of 1899, ss. 1 and 4—Bond—Stipulation for enhanced interest, from date of bond, on breach of covenant to pay interest—Penalty.*—In a bond executed on the 8th of November, 1891, to secure a sum of R8,000, it was stipulated that interest should be paid every six months at the rate of 1 per cent. per mensem, but that in case of default in payment the mortgagor should pay interest at the rate of 2 per cent. per mensem from the date of the execution of the bond. On suit upon this bond to recover the principal *sum secured, with interest at the enhanced rate, it was held* that the provisions of Act VI of 1899 were applicable, the question whether interest was recoverable at the enhanced rate having been put in issue since that Act came into force, although the bond might have been executed before. *Held, also,* that, under s. 74 of the Indian Contract Act, as amended by *Act VI of 1899, the* stipulation for enhanced interest as from the date of the execution of the bond was a stipulation by way of penalty, against which relief should be granted LALJI BHUKHAN DAS *v.* SAMI-UD-DIN AHMAD KHAN (1902)
[I. L. R., 25 All., 189

INTEREST ACT (XXVIII OF 1855).

——s. 2—

See INTEREST—MISCELLANEOUS CASES—

COMPOUND INTEREST ;
[7 C. W. N., 876

MONEY LENT ;
[I. L. R., 29 Calc., 823

INTEREST ACT (XXVIII OF 1855)—*concluded.*

——s. 2—*concluded.*

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.
[I. L. R., 25 Mad., 343

INTERLOCUTORY ORDER.

See APPEAL—EX PARTE CASES.
[6 C. W. N., 153

INTERLOCUTORY PROCEEDING.

See COSTS—COSTS IN THE CAUSE.
[I. L. R., 25 Bom., 330

INTERVENOR.

See DIVORCE ACT (IV OF 1869).
[I. L. R., 30 Calc., 490 n

See DIVORCE ACT (IV OF 1869), ss. 7, 11 AND 45 . . . 7 C. W. N., 504
[I. L. R., 30 Calc., 489

See PARTIES—PARTIES TO SUITS—RENT, SUITS FOR, AND INTERVENORS IN SUCH SUITS

INTESTACY.

See APPEAL—ORDERS—ORDER UNDER MAD. REG III OF 1802, s 16, CL. 7
[I. L. R., 24 Mad., 95

INVENTIONS AND DESIGNS ACT (V OF 1888).

—s. 51—*"Proprietor" of a design—Publication* [illegible] *India*—In 1899 the plaintiffs [illegible]

be an imitation [illegible] for a Bombay firm, and also that the design had been sent to the Bombay firm from a firm in London in [illegible] before the plaintiffs' design was regis- [illegible]

[illegible] the inventor. *Held* that the sending [illegible] Bombay with which [illegible]

INVESTIGATION.

See LOCAL INVESTIGATION.

See POLICE INQUIRY.

IRREGULARITY.

——affecting or not merits of case—

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

See WITNESS—CIVIL CASES.
[I. L. R., 28 Calc., 37

——in appointment of guardian *ad litem*—

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 30 Calc., 1021

——in arbitration—

See ARBITRATION—DUTIES AND POWERS OF ARBITRATORS.
[L. R., 29 I. A., 168

——in civil case—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—TRUST PROPERTY.
[I. L. R., 28 Calc., 574

See SALE IN EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.
[I. L. R., 28 Calc., 73

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

——in criminal case—

See CRIMINAL PROCEEDINGS.
[5 C. W. N., 252
I. L. R., 25 Mad., 546
" 24 Mad., 675

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS . 6 C. W. N., 840

See JOINDER OF CHARGES.
[5 C. W. N., 866
I. L. R., 29 Calc., 385
" 26 Mad., 125

See JURY—JURY IN SESSIONS CASES.
[7 C. W. N., 188
I. L. R., 26 Mad., 598

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION . . 5 C. W. N., 710

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES . 6 C. W. N., 548

——in sale—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

IRRIGATION.

See RIGHT TO USE OF WATER.

IRRIGATION CANAL.

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 28 Calc., 693

IRRIGATION CHANNEL.

See NEGLIGENCE.
[I. L. R., 24 Mad., 36

See RAILWAYS ACT, ss 7, 10 AND 11.
[I. L. R., 25 Mad., 632

See RIGHT TO USE OF WATER.
[I. L. R., 29 Calc., 100

ISSUES.

——abandonment of—

See PLEADER—AUTHORITY OF, TO BIND CLIENT . . L. R., 29 I. A., 76

——determination of—

See RES JUDICATA—MATTERS IN ISSUE.

——non-raising of issue as to limitation—

See LIMITATION—QUESTION OF LIMITATION . . L. R., 29 I. A., 76

——raising of—

See PRACTICE—CIVIL CASES—ISSUES.

—Issues in special suits—*Civil Procedure Code (Act XIV of 1882), s. 331—Specific Relief Act (I of 1877), s. 9—Suit for possession—Execution of decree—Obstruction—Application, for removal of obstruction, registered as a suit—Questions arising in such suit.*—In the case of a [illegible]

ISTEMRARI TENURES.

See LEASE—CONSTRUCTION.
[I. L. R., 30 Calc., 883

J

JALKAR.

See FISHERY, RIGHT OF.

JOINDER OF CAUSES OF ACTION.

See EJECTMENT, SUIT FOR
[I. L. R., 29 Calc., 871

See MISJOINDER

JOINDER OF CAUSES OF ACTION—concluded.

See MULTIFARIOUSNESS.
See RENT, SUIT FOR.
[5 C. W. N., 880

1.—Civil Procedure Code, s. 44.—S 44 of the Civil Procedure Code is not applicable to a suit unless ... the recovery of immovable property or for

2.——————*Civil Procedure Code, ss. 31, 44—Misjoinder of defendants and*

3.——————*Misjoinder of causes of action—Suit including claims under two separate mortgage-deeds*—*Held* that s 44 of the

JOINDER OF CHARGES.

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 5 C. W. N., 131

1.—Distinct offences—*Possession of forged or counterfeit currency notes—Distinct offences—Separate trial—Penal Code (Act XLV of 1860), ss. 411 and 489 (c)*—Offences under ss. 411 and 489 (c) of the Penal Code are distinct offences, and should be tried separately MOHENDRO NATH DAS GUPTA *v.* EMPEROR (1902)
[I. L. R., 29 Calc., 387; s.c., 6 C. W. N., 550

JOINDER OF CHARGES—*continued.*

2.—Misappropriation and criminal breach of trust—*Act XLV of 1860 (Indian Penal Code), s. 406—Criminal breach of trust—Charge—Criminal Procedure Code, ss. 222, 234*—Where an accused

... Code of Criminal

a year, contravenes s 234 of the Code of Criminal Procedure, and is an illegality not curable under s. 537. When the course pursued at the trial was illegal, a Court of Appeal or Revision cannot amend it by arranging afterwards what might or might not have been properly submitted to the jury and thereupon support the conviction or appropriate the finding of guilty to so much of it as was legal. Meaning of the word "irregularity" discussed. *Smurthwaite* v. *Hannay (1894), L. R. A. C, 494,* referred to. *Abdur Rahman* v. *The Empress (1900), 4 C. W. N., 657,* disapproved. SUBRAMANIA IYER *v.* KING-EMPEROR (1901)
[5 C. W. N., 866; s c., I. L. R., 25 Mad., 61; L. R., 28 I. A., 257

4.—Offences falling under two definitions—*Criminal Procedure Code (Act V of 1898), ss. 196 and 235—Sanction to prosecute—Trial for more than one offence*—The accused was committed for trial before a Sessions Court, on a charge of abetment of dacoity, under s. 116 of

JOINDER OF CHARGES—*continued.*

the conviction and acquitted the accused. *Held* (reversing the order of acquittal) that the mere fact that no charge for the graver offence under s 122 of the Indian Penal Code (Act XLV of 1860) could

or abetted the offence of dacoity, he could be tried for each of these offences; but, as that section is controlled, as regards the offence against the State, by the provisions of s. 196 of the Criminal Procedure Code, its operation in this case is restricted to the minor offence, for which the accused could legally be charged and tried. *Queen-Empress* v. *Karigowda (1894), I. L. R., 19 Bom., 51,* and *In re Nagarji (1894), I. L. R., 19 Bom, 340,* distinguished. QUEEN-EMPRESS *v.* ANANT PURANIK (1900)
[I. L. R., 25 Bom., 90

ity of confession of one accused against another on a different charge—Prejudice.—*A* was charged with three separate acts of criminal breach of trust as a public servant, under s 409, Indian Penal Code, and *B* was charged with abetting these particular acts of criminal breach of trust by *A*, and also, upon an alternative charge under ss. 411 and 380, Indian Penal Code, in respect of a document found in his house and entirely unconnected with the acts

trust by *A*, as also on the alternative charge under ss 411 and 380, Indian Penal Code. *Held* that, in the absence of any corroboration of the confession

were quite unconnected with the acts of criminal breach of trust, was improper, and that *B* was prejudiced by such joint trial by reason of the confession of *A* having been used and treated as a substantial part of the evidence against him in support of the second charge. NIKUNJA BEHARI ROY *v.* QUEEN-EMPRESS (1900) . . . 5 C. W. N., 294

6.—"Same transaction"—*Joint trial—Several persons—Offences not committed in same transaction—Irregularity—Illegality—Criminal Procedure Code (Act V of 1898), ss 235, 239 and 537——Penal Code (Act XLV of 1860), s 225—Indian Railways Act (IX of 1890), s. 128*—Gobind Koeri

JOINDER OF CHARGES—*continued.*

was caught by some persons placing clods of earth on a railway line. While being taken away by them,

them in the same trial. *Subramania Iyer* v. *King-Emperor (1901), I. L. R., 25 Mad., 61,* followed. GOBIND KOERI *v.* EMPEROR (1902)
[I. L. R., 29 Calc., 385; s.c., 6 C. W. N., 468

7.——— *Criminal Procedure Code (Act V of 1898), ss 234 and 235—Number of charges.*—The fact that offences are committed at different times does not necessarily show that they may not be so connected as to fall within s. 235 of the Criminal Procedure Code (Act V of 1898). The occasions may be different, but there may be a continuity and a community of purpose. The real and substantial test by which to determine

ing to be Hubbock's paint, having a counterfeit mark (under s 486). He was convicted and separately sentenced for these offences He appealed, contending that the trial was illegal, inasmuch as he had been charged at one trial with offences which were not connected together so as to form the same transaction under s 235 (1) of the Criminal Procedure Code (Act V of 1898) *Held,* dismissing the

namely, that of deceiving buyers into purchasing what was not the genuine article of Hubbock and Company. EMPEROR *v.* SHERUFALLI ALLIBHOY (1902) . . . I. L. R., 27 Bom., 135

8. ——— *Criminal Procedure Code (Act V of 1898), ss. 233, 235, 537—Misjoinder of charges—Objection first taken on appeal—Irregularity.*—A person was convicted on three

JOINDER OF CHARGES—*continued*

charges, namely —(1) abetting the falsification of a document (an account book), (2) fraudulently destroying and secreting documents, and (3) abetting criminal breach of trust; no objection on the ground of misjoinder being taken before the Sessions Judge. The only manner in which the alleged falsification and destruction were connected was that the account book and the documents were both in the custody of the accused, who thus had opportunity to falsify the one and to destroy the other. It was not suggested that the account book was falsified in order to conceal the fact that documents had been destroyed, or that documents had been destroyed in order to prevent the particular falsification from being detected. *Held* that the offences charged did not constitute one series of acts so connected together as to form the same transaction within the meaning of s 235 of the Code of Criminal Procedure. *Held, also,* that the misjoinder could not be treated as an irregularity curable under s. 537, and that the conviction must be set aside. *Subramania Iyer* v *King-Emperor (1901), I. L R., 25 Mad., 61,* followed. KRISHNASAMI PILLAI *v* EMPEROR (1902)

[I. L. R., 26 Mad., 125

not committed in one series of acts so connected together as to form one transaction. The offence of kidnapping is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as the minor is kept out of such guardianship. Even assuming that on the facts of this case the process of "taking" or "enticing" was going on at the time of the alleged assault on the mother, it was doubtful whether the assault was one of a series of acts so connected together as to form the same transaction, and the charge of assault should have been brought and tried separately. CHEKUTTY *v.* EMPEROR (1902)

[I. L. R., 26 Mad., 454

JOINDER OF CHARGES—*concluded.*

(including s. 239) refer to the trial of the accused. The ruling in *Subramania Iyer* v. *Emperor (1901), I. L. R., 25 Mad., 61,* cannot be extended to a preliminary inquiry held by the Magistrate committing a case to a Sessions Court, so as to render the commitment itself illegal because there was misjoinder of offences or of offenders. In such a case, the Sessions Judge, if he considers it necessary, can frame charges against and try the accused separately. IN THE MATTER OF GOVINDU (1902)

[I. L. R., 26 Mad., 592

JOINDER OF PARTIES.

See MISJOINDER.

See MULTIFARIOUSNESS.

See PARTIES—

PARTIES TO SUITS—JOINT FAMILY; [I. L. R., 28 Calc., 517

ADDING PARTIES TO SUITS.

JOINT DEBTORS.

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR

—— suit against—

See CIVIL PROCEDURE CODE, s 153. [I. L. R., 25 Bom., 378

JOINT DECREE.

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

JOINT DECREE-HOLDERS.

See LIMITATION ACT, 1877, ss 7 AND 8 AND SCH II, ART. 179. [I. L. R., 25 Mad., 431

JOINT FAMILY.

See HINDU LAW—

ALIENATION—ALIENATION BY FATHER;

JOINT FAMILY.

See MAHOMEDAN LAW—JOINT FAMILY.

See MALABAR LAW—JOINT FAMILY.

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.

——business—

See HINDU LAW—JOINT FAMILY—DEBTS, AND JOINT FAMILY BUSINESS.

——property—

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

JOINT FAMILY—*concluded.*

——property—*concluded.*

See HINDU LAW—

INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP;

PARTITION.

See PARTITION—MISCELLANEOUS CASES. [6 C. W. N., 698

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

JOINT LANDLORDS.

See BENGAL TENANCY ACT—

ss. 65 AND 188; [I. L. R., 29 Calc., 219

ss. 90, 52 AND 188; [7 C. W. N., 93

s 188.

JOINT PROPERTY.

See CO-SHARERS

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

See INJUNCTION—SPECIAL CASES—POSSESSION OF JOINT PROPERTY.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT. [I. L. R., 28 Calc., 227

See JOINT FAMILY—PROPERTY.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION . . 7 C. W. N., 462

JOINT TENANCY.

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP. [I. L. R., 26 Bom., 445

See PUBLIC DEMANDS RECOVERY ACT. [6 C. W. N., 302

—*Landlord and tenant—Kabuliyat by one of several joint tenants—Liability of such tenant for his share only.*—Where one of several joint tenants executed a *kabuliyat* in favour of the landlord for the entire tenure, and it was proved that the other tenants did not acquiesce in this, and where in a separate suit by the other tenants it was found that they were not bound by the *kabuliyat*: *Held* that the tenant executing the *kabuliyat* for the entire tenure was not bound in excess of his share, and was not liable for the whole rent. *Burhanuddi Howladar* v. *Mohun Chunder Guha* (1881), *8 C. L. R.*, *511*, relied upon. RAM TARAN CHATTERJEE *v.* ASMATULLAH SHEIKH (1900) [6 C. W. N., 111

JOINT TRIAL.

See CONFESSION—CONFESSION OF PRISONERS TRIED JOINTLY.

JOINT WRONG-DOERS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS.

JUDGE.

See DISTRICT JUDGE.

See JUDGE OF HIGH COURT.

See SESSIONS JUDGE

See SUBORDINATE JUDGE.

See SPECIAL SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—DISCRETION, EXERCISE OF.

——is, in India, judge of both law and facts—

See MALICIOUS PROSECUTION. [I. L. R., 28 Calc., 591

—Duty of Judge—*Propriety of consultation with another Judge*—Judges who have heard the

[illegible]

JUDGE OF HIGH COURT.

See REFERENCE TO FULL BENCH. [I. L. R., 28 Calc., 211

——order of—

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15.

——power of—

See SUPERINTENDENCE OF HIGH COURT.

JUDGMENT.

See FOREIGN COURT, JUDGMENT OF.

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15.

See PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS.

——copy of, deduction of time necessary for obtaining—

See LIMITATION ACT, 1877, ss. 12 AND 5.

——criminal cases—

See DISCHARGE OF ACCUSED—EFFECT OF DISCHARGE. I. L. R., 29 Calc., 726

JUDGMENT—*concluded.*

—— **in former suit, admissibility in evidence of—**

See Estoppel—Estoppel by Judgment.

See Evidence, Civil Cases—Decrees.

See Res Judicata—Estoppel by Judgment

—— **reversal of—**

See Appellate Court—Interference with, and Power to vary, Order of lower Court.

CRIMINAL CASES.

[illegible]

(1901) . . . I. L. R., 25 Mad., 594

2.—*Criminal Procedure Code (Act V of 1898), s. 367—Judgment of Appellate Court—Recording of, when defective—Deficiency, if can be made up for by reference to judgment of Court of first instance—Appeal, proper trial of—Order for re-trial—Practice.*—It is the duty of a Sessions Judge disposing of an appeal to record a judgment according to law Where certain persons were convicted of rioting by a Deputy Magistrate, and the Sessions [illegible]

[illegible]

[illegible] C. W. N., 53

JUDGMENT-DEBT.

—— **agreement to give time for satisfaction of—**

See Civil Procedure Code, s. 257A.
[I. L. R., 26 Mad , 19

JUDGMENT-DEBTOR.

See Arrest—Civil Arrest.

See Insolvency—Insolvent Debtors under Civil Procedure Code.

See Warrant of Arrest—Civil Cases.
[I. L. R., 26 Mad., 120

—— **death of—**

See Civil Procedure Code, 1882, s. 108.
[I. L. R., 29 Calc., 93

JUDGMENT-DEBTOR—*concluded.*

—— **death of**—*concluded.*

See Execution of Decree—Execution by and against Representatives.

See Representative of Deceased Person.

See Surety—Liability of Surety.
[I. L. R., 24 Mad., 637

—— **deposit of money by—**

See Sale in Execution of Decree—Distribution of Sale-proceeds.
[I. L. R., 30 Calc., 262

—— **representative of—**

See Civil Procedure Code, s. 244—Parties to Suit.

See Representative of Deceased Person.

JUDICIAL COMMISSIONER, OUDH.

See Oudh Courts Act, s 8.
[5 C. W. N., 781

JUDICIAL DISCRETION.

See Discretion of Court.

JUDICIAL NOTICE.

See Accused Person . 5 C. W. N., 110

JUDICIAL OFFICER.

—— **Land Acquisition Collector is not—**

See Land Acquisition Act (I of 1894).
[I. L. R., 30 Calc., 36

JUDICIAL PROCEEDING.

See Criminal Procedure Code, s 476.
[7 C. W. N., 423

See False Evidence—

General Cases;

Fabricating False Evidence.
[I. L. R , 28 Calc., 348

—— **proceeding before Land Acquisition Collector is not—**

See Land Acquisition Act (I of 1894).
[I. L. R., 30 Calc., 36

—— **revision of—**

See Revision—Criminal Cases.

See Superintendence of High Court.

JURISDICTION.

See DISTRICT JUDGE, JURISDICTION OF.

See EXECUTION OF DECREE—

APPLICATION FOR EXECUTION, AND POWERS OF COURT ;
[5 C. W. N., 287

TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION.

See FOREIGN COURT, JUDGMENT OF.
[I. L. R., 29 Calc., 509

See HEREDITARY OFFICES ACT (BOM ACT III OF 1874), s. 18.
[I. L. R., 25 Bom., 186

See HIGH COURT, JURISDICTION OF.

See JURISDICTION OF CIVIL COURT.

See JURISDICTION OF CRIMINAL COURT.

See JURISDICTION OF REVENUE COURT.

See LETTERS PATENT, HIGH COURTS, 1865, CL 12.

See MAGISTRATE—

GENERAL JURISDICTION ;

POWERS OF MAGISTRATES.
[I. L. R., 29 Calc., 242

See MAMLATDAR, JURISDICTION OF

See MUNSIF.

See PLAINT—PROCEDURE.
[I. L. R., 24 Mad., 168

See RECEIVER . I. L. R., 30 Calc., 593

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . I. L. R., 30 Calc., 463

See RIGHT OF SUIT—FRAUD.
[7 C. W. N., 353

JURISDICTION—*continued*

See SECRETARY OF STATE
[I. L. R., 27 Bom., 189

See SESSIONS JUDGE, JURISDICTION OF.

See SUBORDINATE JUDGE, JURISDICTION OF.

See SUPERINTENDENCE OF HIGH COURT.

See VALUATION OF SUIT.

—— attachment of property outside—
See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT . . 7 C. W. N., 218

—— cause of action—
See EXECUTOR . . 7 C. W. N., 476

See MISJOINDER.
[I. L. R., 28 Bom., 259

—— matrimonial jurisdiction—
See DIVORCE ACT (IV OF 1869)

—— of Mofussil Small Cause Court—
See SMALL CAUSE COURT—MOFUSSIL—JURISDICTION ;

PRACTICE AND PROCEDURE.
[I. L. R., 25 Bom., 417

—— of Presidency Small Cause Court—
See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE . I. L. R., 30 Calc., 397

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION.

—— of Small Cause Court—
See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY.
[I. L. R., 30 Calc., 713

—— over foreigners—
See FOREIGN COURT, JUDGMENT OF.
[5 C. W. N., 741

—— want of—
See REGISTRATION ACT (III OF 1877), s 28.
[I. L. R., 29 Calc., 654

1 CAUSES OF JURISDICTION.

(a) DWELLING.

1.—*Letters Patent, 1865, cl. 12*—"*Dwell*"— [illegible]

Malabar Hill in Bombay. The plaint in the first instance was rejected for want of jurisdiction. On appeal: *Held* that the temporary residence of the

JURISDICTION—*continued*

1. CAUSES OF JURISDICTION—*continued.*

(*a*) Dwelling—*concluded.*

ing at any particular time, but it is open to him to show that he is not dwelling there, but at some other place. The defendant had no residence at Kolhapur at the time the plaint was presented, and must be taken to have then been dwelling in Bombay. Fernandez *v.* Wray (1900)

[I. L. R., 25 Bom., 176

(*b*) Cause of Action

(*i*) General Cases

2.—Foreigner—*Defendants non-resident foreigner*
tion—
s 17,
Cause
the C
British Courts are empowered to pass judgment against a non-resident foreigner, provided that the cause of action has arisen within the jurisdiction of the Court pronouncing the judgment. Rambhat *v.* Shankar Baswant (1901)

I. L. R., 25 Bom., 528

ant's heirs—Practice—Procedure —A Mahomedan

possession. Held that the cause of action did not

(*ii*) Breach of Contract.

4.—*Civil Procedure Code (Act XIV of 1882), s. 17 (a) and Expl. III (ii) and (iii)—Suit for price of goods delivered—Jurisdiction—Place of suing—Contract, suit arising out of—Cause of action, where arises*—Plaintiff, who resided at Samastipur in the Tirhoot District, having indigo seeds for sale, advertised: "For sale. 300 mds. fresh indigo seeds at R3-8 per md. delivered at Kishenpore station" (in Tirhoot District). Defendant, who resided at Nadia, wired: "Will give R3 for 300 mds. and, if offer accepted, despatch to Choodanga" (Railway station in Nadia District), and wrote a letter the same day to the same effect and asking for railway receipt. Plaintiff, on receipt of the telegram, wrote: "120 bags (300 mds.) of indigo seed went forward to Kishenpore station early this morning, and I have instructed station-master to despatch it . . . . R. R is herewith enclosed. Your cheque for R900 on receipt of seed will oblige . . . ." The seeds were delivered
-nga, and
brought
Samasti-
Held
that the
shenpore

[1 C. W. N., 912

JURISDICTION—*continued.*

1. CAUSES OF JURISDICTION—*continued*

(*b*) Cause of Action—*continued.*

(*ii*) Breach of Contract—*concluded.*

(*iii*) Compromise.

5.—*Civil Procedure Code, s 17—"Cause of action"—Suit for a declaration that a compromise and a decree founded thereon are null and void as against the plaintiff, and for an injunction restraining*

(1895), I. L. R., 22 Calc., 833, at p. 840, referred to. The plaintiff came into Court, alleging that he was the adopted son of one Balmakund, having been adopted to him by Balmakund's widow, and that the

for a considerable sum payable out of the property left by Balmakund, which property the plaintiff

JURISDICTION—*continued.*

1. CAUSES OF JURISDICTION—*continued.*

(*b*) CAUSE OF ACTION—*continued.*

(*iii*) COMPROMISE—*concluded.*

Cawnpore, and execution was being taken out there, a material portion of the plaintiff's cause of action arose in Cawnpore, and the Subordinate Judge of [illegible]

(*iv*) COSTS.

6.—*Assignment of decree for costs—Costs realized by assignee—Decree reversed in appeal—Suit by successful appellants to recover from the assignee the costs realized by him.*—Certain appellants in the High Court obtained from that Court a decree dismissing the respondents', plaintiffs', suit with costs. That [illegible]

[illegible] decree-holders filed a separate suit against him for their recovery. *Held* that the decree-holders had no cause of action for a suit to recover from the assignee the costs realized by him in the manner above described. LALTA PRASAD *v* SADIQ HUSEN (1902)

[I. L. R., 24 All., 288

(*v*) FALSE EVIDENCE.

7.—*False evidence not actionable—Conspiracy to give false evidence*—No civil action lies against a witness for giving false evidence; and the fact that the evidence is given in pursuance of a conspiracy to obtain the conviction of the accused person does not make any difference. The only remedy against a false witness is a prosecution for perjury. Where, therefore, a plaintiff sued three defendants for giving false evidence against him in a trial at Bombay, alleging that it was done in pursuance of a conspiracy entered into at Hyderabad to obtain his conviction: *Held* that the plaint disclosed no cause of action. A mere conspiracy to injure a man, without an overt act resulting in the injury, does not furnish any cause of action. A conspiracy is not illegal unless it results in an act done which by itself would give a cause of action. TEMPLETON *v.* LAURIE (1900)

[I. L. R., 25 Bom., 230

(*vi*) NEGOTIABLE INSTRUMENTS.

8.—*Stamp Act (I of 1879), s. 16—"Stamped at the time of execution"—Stamp Act (II of 1899)—Affixing and cancelling stamp immediately after signature—Letters Patent, Art. 12—Part of the cause of action—Promissory note payable in Madras or Secunderabad—Payments of interest in Madras*—A promissory note was executed in plaintiff's favour at Vizianagram, payable in Secunderabad or Madras. Payments of interest due on the note were made in Madras. The note was signed first, the stamp having been affixed and cancelled after signature, the acts being practically simultaneous. Leave to sue in the High Court had been obtained under Art. 12 of the Letters Patent. *Held* that part of the cause of action had arisen in Madras. *Also* that the note was stamped at the time of the execution, within the meaning of s 16 of the Stamp Act (I of 1879) SURIJ MULL *v* HUDSON (1900)

[I. L. R., 24 Mad., 259

(*vii*) PRINCIPAL AND AGENT.

9.—*Jurisdiction—Foreigner carrying on business by agent—Civil Procedure Code (Act XIV of 1882), s. 17—Suit in Court in British India on judgment of French Court—Effect of order in insolvency of French Court—Business carried on by managing member of joint family—Quære* whether a non- [illegible]

[illegible] that the agency was not proved, the alleged agent being merely the manager of joint family property, of which the defendant owned a share; and they held [illegible]

[illegible]

2. SUITS FOR LAND.

RENT.

10.—*River changing its course—Act XII of 1881 (North-Western Provinces Rent Act), ss. 1, 104, 93 (a)—Suit for rent*—Of two agricultural holdings

JURISDICTION—*concluded.*

2. SUITS FOR LAND—*concluded.*

RENT—*concluded.*

situated in the Ballia district of the North-Western Provinces, each separately assessed to rent, one became submerged by the river Ganges, and subsequently re-appeared on the other side of the river in the Shaha- [illegible]

PRASAD KUARI *v.* RATUL THAKUR (1901) [I. L. R., 23 All., 282

JURISDICTION OF CIVIL COURT.

See BENGAL TENANCY ACT, ss. 101 TO 111A . . I. L. R., 28 Calc., 28

See COURT OF WARDS ACT (BENGAL ACT IX OF 1879), ss. 6, 7 AND 10. [I. L. R., 29 Calc., 638

See CROWN LANDS [I. L. R., 25 Mad., 268

See HIGH COURT, JURISDICTION OF.

See MADRAS HEREDITARY VILLAGE OFFICES ACT, s. 3 I. L. R., 26 Mad., 490

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

See PENSIONS ACT (XXIII OF 1871), ss. 4 AND 6.

See PRACTICE—CIVIL CASES—EXECUTION PROCEEDINGS. I. L. R., 28 Calc., 353

See RECEIVER . I. L. R., 28 Calc., 790

See RIGHT OF SUIT.

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS. [I. L. R., 29 Calc., 773

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—BREACH OF PROMISE OF MARRIAGE. [I. L. R., 24 Mad., 652

See TAX . I. L. R., 26 Bom., 294

JURISDICTION OF CIVIL COURT—*continued.*

—— Magistrate's orders, interference with—

See MAMLATDAR, JURISDICTION OF. [I. L. R., 26 Bom., 353

—— marriage—

See RESTITUTION OF CONJUGAL RIGHTS. [I. L. R., 28 Calc., 37

1. CASTE.

1.—*Caste question—Excommunication from caste—Bombay Regulation II of 1827, s. 21, cl. 1—Civil Procedure Code (Act XIV of 1882), s. 11—Zanzibar to be treated as a district in the Presidency of Bombay—Zanzibar Order in Council, 1884—Defamation—Privilege—* [illegible]

Courts. But when a claim to property is involved, the Regulation is no bar so far as that claim is concerned. The Courts in that case have a distinct and separate jurisdiction, resting not on the caste dispute but on the claim to property. Plaintiffs and defendants were residents of Zanzibar, and belonged to the Visa Oswal section of the Bania caste. The defendants were Shettias of the caste, and as such had issued an order forbidding their caste-fellows to attend a certain feast given by the members of the Lovana caste. [illegible]

granted. No claim to property was involved. It was a caste question, over which the Civil Courts had no jurisdiction under Bombay Regulation II of 1827, s. 21, cl. 1. *Held,* as to the claim for damages for defamation, that the announcement of the caste decision was a duty incumbent on the defendants as Shettias of the caste, and was therefore privileged so far as it was communicated only to members of the caste. The evidence did not disclose any communication beyond that limit, and no evidence of malice was given. *Per* CHANDAVARKAR, J.—Roughly speaking, a suit raising a caste question must fall within one of three classes. *First,* it may be a suit brought by a member of a caste, complaining of expulsion and asking for a declaration that the expulsion is illegal and that he is still a

JURISDICTION OF CIVIL COURT —*continued.*

1. CASTE—*concluded.*

member, and as such entitled to its *social privileges.* In cases of this class there is no cause of action, and the Civil Courts have no jurisdiction, although the plaintiff alleges that he has not been heard in his defence or that his excommunication has been for the breach of a rule which either never existed or which the plaintiff, in fact, never violated The question is entirely a caste question, and falls within Bombay Regulation II of 1827, s. 21, cl. 1.

diction is limited. All the Court can inquire into is whether the order of excommunication was passed *bonâ fide* in accordance with natural justice, *i.e.*, after a due hearing given to the party excommunicated, at a regularly convened meeting of the caste which passed the order, or by a person duly authorized by the caste to pass it, in accordance with either caste usage or rule, and for an offence against that

cretion it will not interfere—the Court in that case having jurisdiction to inquire, from the point of view of the caste, not of the Court, into the reasonableness or justifiable character of the rule for a breach of which the order of excommunication was passed. *Thirdly*, suits claiming relief for loss of caste and character: these are in the nature of suits for libel, and fall within the law applicable to such suits. NATHU VELJI *v.* KESHAWJI HIRACHAND (1901) . . . I. L. R., 26 Bom., 174

2. RENT AND REVENUE SUITS.

NORTH-WESTERN PROVINCES.

2.—Suit for ejectment—*Act XII of 1881 (North-Western Provinces Rent Act), ss. 93, 95—Jurisdiction—Civil and Revenue Courts—Suit to eject as a trespasser a person who claimed to be entitled to succeed to the holding of a deceased*

the Civil Court for ejectment of such person, as a trespasser who had no right whatever to succeed to the

JURISDICTION OF CIVIL COURT —*continued.*

2. RENT AND REVENUE SUITS—*continued.*

NORTH-WESTERN PROVINCES—*continued.*

19 All., 452; and *Kaliani* v. *Dassu Pande (1898), I. L. R., 20 All., 520,* referred to. BARU MAL *v.* NIADAR (1901) . . I. L. R., 23 All., 360

3. ———— *Act XII of 1881 (North-Western Provinces Rent Act), ss. 93, 95—Act XIX of 1873 (North-Western Provinces Land-revenue Act), s. 102—Jurisdiction—Civil and Revenue Courts—Suit to eject as a trespasser a person who claimed to be entitled to the holding of a deceased occupancy tenant—Res judicata.*—Upon the death of an occupancy tenant, a person, who alleged that he was entitled to succeed to the deceased's occupancy holding, obtained from the revenue authorities, by means of an application under s 102 of the North-Western Provinces Land-revenue Act, mutation of names in his

such suit *Subarni* v. *Bhagwan Khan (1896), I. L. R., 19 All., 101,* distinguished. NIADAR *v.* BARU MAL (1901) . . I. L. R., 24 All., 153

4.—Suit for possession—*Act XII of 1881 (North-Western Provinces Rent Act), ss. 10, 93, 95—Act XIX of 1873 (North-Western Provinces Land-revenue Act), s. 241—Jurisdiction—Civil and Revenue Courts—Suit by mortgagee from occupancy tenant for possession of*

attempted to take possession of the land under his

JURISDICTION OF CIVIL COURT —*continued.*

2. RENT AND REVENUE SUITS—*concluded.*

NORTH-WESTERN PROVINCES—*concluded.*

5.—**Suit for removal of trees**—*Act XII of 1881 (North-Western Provinces Rent Act), s. 93, cls. (b), (c) and (cc)—Suit by zamindar against tenant for removal of trees planted by tenant on tenant's holding—Jurisdiction—Civil and Revenue Courts*—The plaintiff alleged in his plaint that, he being the zamindar, and the defend- [illegible]

[illegible]

mandatory injunction directing the defendants to remove the trees and to restore the land to its original condition. *Held* that the suit involved a dispute or matter in which a suit of the nature mentioned in s. 93 of Act XII of 1881 might have been [illegible]

[illegible]

I. L. R., 9 All., 33, overruled. *Deodat Tiwari* v. [illegible]

[illegible] paid [illegible] *of 1873* [illegible] *Act),* [illegible] *rthern India Canal and Drainage Act), s 45—Claim arising out of collection of revenue or for sum realizable as revenue.*—A suit to recover canal dues alleged to have been paid by mistake is a claim arising under s. 241, cl. (*i*), of the North-Western Provinces Land-revenue Act of 1873; and, under that provision, read with s. 45 of the Northern India Canal and Drainage Act, 1873, a Civil Court has no jurisdiction to entertain it. The High Court was right in taking cognizance of the [illegible]

[illegible]

3. REVENUE COURTS.

PARTITION.

7.—*Civil and Revenue Courts—Jurisdiction—Act XIX of 1873 (North-Western Provinces Land-revenue Act), s. 241(f)—Suit by person, not a party to the partition proceedings, to obtain in a Civil Court a declaration that a partition carried out in a Revenue Court was fraudulent and injurious to his interest*—If, by a fraud practised

JURISDICTION OF CIVIL COURT —*concluded.*

3. REVENUE COURTS—*concluded.*

PARTITION—*concluded.*

[illegible]

JURISDICTION OF CRIMINAL COURT.

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.

See MAGISTRATE—

GENERAL JURISDICTION;

POWERS OF MAGISTRATES;
[I. L. R., 29 Calc., 885

RE-TRIAL OF CASES.
[I. L. R., 29 Calc., 412

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R., 25 All., 545

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION;
[5 C. W. N., 105

LIKELIHOOD OF BREACH OF THE PEACE . I. L. R., 28 Calc., 446

See REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED.
[I. L. R., 27 Bom., 84

See SANCTION FOR PROSECUTION—REVOCATION OF SANCTION
[I. L. R., 30 Calc., 394

See SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 29 Calc., 455

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.
[I. L. R., 30 Calc., 508, 508n

—— in Native State—

See FOREIGN JURISDICTION ACT, 1879, ss. 4, 6 AND 8.
[I. L. R., 26 Mad., 607

JURISDICTION OF CRIMINAL COURT—*concluded.*

—— **Magistrate cannot split up offences in order to give himself jurisdiction—**

See ROBBERY . 5 C. W. N., 372

1. GENERAL JURISDICTION.

1.—Offence committed on the high seas— *Jurisdiction—High seas—Procedure—Penal Code (Act XLV of 1860)—37 & 38 Vict., c. 27, s. 3.*—A Presidency Magistrate has authority to charge, convict and sentence, under the

2.—Offence committed out of British India— *Criminal Procedure Code, s. 188—Offence ... British India by Native Indian*

Code of Criminal Procedure was applicable was commenced without the certificate provided for by that section having been obtained, it was *held* that the proceedings were void, and that the subsequent com-

2. EUROPEAN BRITISH SUBJECTS.

3.—*Criminal Procedure Code, s 451 (1)—Right ... to be tried by a jury*

cused, before the trial had begun, ... did not wish for a jury, did not prevent him from

I. L. R., 24 All., 511

JURISDICTION OF REVENUE COURT.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.

See NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881), SS. 42, 95 AND 206. [I. L. R., 24 All., 517

See RENT, SUIT FOR. [I. L. R., 28 Calc., 465

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

JURY.

See CHARGE TO JURY.

See VERDICT OF JURY.

—— **Jury under nuisance sections of Criminal Procedure Code—**

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE—REMOVAL OF PROSTITUTES . . . 5 C. W. N., 566

See VERDICT OF JURY . 6 C. W. N., 886

—— **right to claim—**

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. [I. L. R., 24 All., 511

—— **trial by—**

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE [I. L. R., 25 Bom., 680

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.

1. JURY IN SESSIONS CASES.

1.—Choosing jury— *Criminal Procedure Code (Act V of 1898), ss. 276 to 279, 326, 537—Jury, selection of, how made—Selection by lot, object of—Irregularity in selection affecting the constitution of the Court, whether curable—Right of accused to be tried by a properly-selected jury—Exemption of juror, when proper.*—The object of the provisions in ss 326 and 276-279 of the Criminal Procedure Code is to secure an impartial trial by rendering impossible any intentional selection of jurors to try a particular case; and an accused person ... tried by a jury chosen with ... herein ... al Pro- ... sum- ... by lot ... liable-

JURY—*continued*

1. JURY IN SESSIONS CASES—*concluded.*

to serve as jurors, and s 276 provides that those again who are to try a particular case are to be similarly chosen by lot from amongst the persons so summoned, or, when there is a deficiency of persons summoned, from amongst such other persons as might be present in [illegible]

[illegible]

irregularity of a very grave and serious nature, such [illegible] by the provisions of s 537.

[illegible]

2.—Jurors as assessors—*Criminal Procedure Code (Act V of 1898), ss. 69 (3), 309—Sessions Judge sitting with jury—Charges of theft and administering drug—Opinion of only two jurors taken as assessors on second charge—Validity*—At the trial of an accused, before a Sessions [illegible]

[illegible]

3.—Summons on juror—*Criminal Procedure Code (Act V of 1898), s. 332—Summons upon a juror—Absence from home—Service, by fixing on door—Non-attendance of juror—Fine*—Where summons was served by fixing the duplicate on the door of the dwelling-house of a juror who at the time was living away from home and had no knowledge of such service of the summons: *Held* that [illegible]

[illegible]

arrangement for the acceptance of notice or information to the Court of their inability to attend MONI LAL ROY *v* EMPEROR (1902) 6 C. W. N., 887

2. WITHDRAWAL OF CASE FROM JURY.

4.—No power of withdrawal in Court of Session.—Under the present Code of Criminal

JURY—*concluded.*

2 WITHDRAWAL OF CASE FROM JURY—*concluded.*

Procedure, a Court of Session does not possess the power to withdraw a case from the jury on any ground whatsoever. Where the case is such that the Sessions Judge would, if he possessed the power of withdrawing the case from the jury, exercise that power, the High Court will exercise its powers of *revision.* JOGESHWAR GHOSE *v* KING-EMPEROR (1901) . . . . . 5 C. W. N., 411

JUSTICE OF THE PEACE.

See FOREIGN JURISDICTION ACT, 1879, SS. 4, 6 AND 8.
[I. L. R., 26 Mad., 607

K

KABULIYAT.

See ACQUIESCENCE . 7 C. W. N., 170

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—KABULIYATS.

See EVIDENCE—PAROL EVIDENCE—

EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES; . 6 C. W. N., 242

VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.
[6 C. W. N., 60

See JOINT TENANCY . 6 C. W. N., 111

See LEASE.

—— suit to set aside—

See BENGAL TENANCY ACT, s 29.
[I. L. R., 28 Calc., 90

KANUNGO.

See PENAL CODE, s 186.
[6 C. W. N., 120

KARNAVAN.

See MALABAR LAW—ENDOWMENT.

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880).

—— s. 8—

—Khot—Khot in isbat lands—Settlement Officer—Thal—Occupancy tenants—Rents payable by other tenants in absence of agreement with the khot—Landlord and tenant—Where, in a *khoti* village, the Settlement Officer has determined the share of *thal* with regard to the occupancy tenancies, and the tenants other than the occupancy tenants do.

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880)—*concluded.*

——s. 8—*concluded.*

not appear to hold their lands on any terms agreed upon between the *khot* and themselves, such tenants are entitled, under s. 8 of the *khot* Settlement Act (Bombay Act I of 1880), to pay rent to the *khot* at the same rates as are paid by occupancy tenants. KRISHNOVA NAYAK *v.* KESHAV BALKRISHNA (1902) [I. L. R., 27 Bom., 71

—— s. 33—

See RES JUDICATA—MATTERS IN ISSUE—SUIT FOR RENT [I. L. R., 26 Bom., 25

KIDNAPPING.

known by the nephews and by *K* that the father objected to such a marriage. *K* was present at the

footing that the kidnapping was from the guardianship of *K*. The accused were acquitted, on the

in-

rson

the

be

in the custody of a servant or friend for a limited

KIDNAPPING—*concluded.*

purpose and for a limited time does not determine the father's rights as guardian or his legal possession for the purposes of the criminal law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor, the latter must be held to be in the father's possession or keeping, even though the actual possession should be temporarily with a friend or other person. JAGANNADHA RAO *v.* KAMARAJU (1900) [I. L. R., 24 Mad., 284

2.—Offence when complete.—The offence of kidnapping is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as the minor is kept out of such guardianship. CHEKUTTY *v.* EMPEROR (1902) [I. L. R., 26 Mad., 454

3.—Rioting with intent to abduct—*Indian Penal Code (Act XLV of 1860), ss. 147, 366—Abduction—Rioting, charge of, whether it would*

was not proved: *Held* that, the intention of the abduction not being proved, and a charge of bare abduction *per se* (without the intention pointed out in the different sections dealing with the subject) not being an offence under the law, the conviction under s. 147 was bad. KHALIL NASYA *v.* EMPEROR (1901) . . . . . 6 C. W. N., 208

KNOWLEDGE.

See ACQUIESCENCE.

—— of commission of offence—

See RIOTING . I. L. R., 28 Calc., 504

KUMAON AND GARHWAL.

[I. L. R., 24 All., 318

L

LABOURER.

See ACT—1859—XIII

LACHES.

See SPECIFIC PERFORMANCE—GENERALLY. [I. L. R., 30 Calc., 265

LAMENESS.

See HINDU LAW—INHERITANCE—DIVESTING OF, OR EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.
[I. L. R., 26 Mad., 133

LAND.

—— acquisition of—

See LAND ACQUISITION ACT.

LAND ACQUISITION ACT (X OF 1870).

—*Apportionment of compensation-money, principle of—Landlord and tenant*—In apportioning compensation-money between a landlord and a tenant, the principle to be followed is, first, to ascertain the amount of rent payable to the landlord and capitalize that rent at so many years' purchase, and then to put a money value upon the chance (if there be any) of an enhancement of the then existing rent. These two sums the landlord is entitled to get, and the tenant is entitled to get the balance. SHAMA PROSUNNO BOSE MOZUMDAR *v* BRAKODA SUNDARI DASI (1900) . . . I. L. R., 28 Calc., 146

—— ss. 9, 16, 40—

—*Notice—Persons known or believed to be interested—Power to take possession—Vesting of land absolutely in Government*—Land acquired under the provisions of Act X of 1870 vests absolutely in the Government, free from all encumbrances, after a *bonâ fide* award or reference by the Collector has been made and possession taken, even when no special notice, as required by s. 9 of the Act, has been served on persons known or believed to be interested therein. *North London* [illegible]

LAND ACQUISITION ACTS (XVIII OF 1885 AND I OF 1894).

—*Compensation—Apportionment of compensation-money—Landlord and tenant—Rent fixed in perpetuity—Bengal Tenancy Act (VIII of 1885), s 50, sub-s (2)*—In apportioning compensation-money, awarded under the Land Acquisition Act, between the landlord and the tenure-holder, the Court ought to proceed on the principle of ascertaining what the value of the interest of the landlord is on the one hand, and that of the tenant on the other, and to divide the sum awarded between them in accordance with these values. Where the [illegible]

LAND ACQUISITION ACTS (XVIII OF 1885 AND I OF 1894)—*concluded.*

I. L. R, 7 Calc. 555; Dunne v. *Nobo Krishna Mookerjee (1889), I. L. R, 17 Calc, 144; Rajah* [illegible]

LAND ACQUISITION ACT (I OF 1894).

See APPELLATE COURT—INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT . I. L. R., 30 Calc., 501

See BOMBAY CITY IMPROVEMENT ACT.
[I. L. R., 27 Bom., 424

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 5 C. W. N., 131

1.—Compensation—*Compensation, determination of—Compensation for severance.*—Under the provisions of the Land Acquisition Act (I of 1894), part of an owner's tea garden land was taken, and by the construction of a railway line several acres of land to the south of the line were cut off from the northern portion of the garden, where the residence of the manager, and all buildings and offices connected with [illegible]

2.—————*Landlord and tenant—Patnidar, whether entitled to abatement of rent and compensation—Proportion—Principal*—Where a [illegible]

—— s. 6—

See ZANZIBAR . L. R., 28 I. A., 121

LAND ACQUISITION ACT (I OF 1894) —*continued*

——ss. 6 to 8, 9 (2), 11, 39 to 41, 48, 50 (2)—

—*Owner—Land—Notice of inquiry—Govern-*

sition Collector extends, under the Act of 1894, over

interests and sole judge as to whether the land is required for the construction of work and whether that work will prove useful to the public. This Court is not competent to question the validity of the proceedings under s 40 of the Act. It is not open to this Court to discuss the sufficiency of the inquiry made by the Collector, or his qualifications. The Local Government is sole judge S. 41 of the Land Acquisition Act makes the Government sole

with certain powers to require the attendance of persons to make statements relevant to the matters which he has to inquire into. *Durga Dass Rakhit v. Queen Empress (1900), I. L. R., 27 Calc., 820,* followed. Neither the inquiry nor the proceedings held by the Land Acquisition Collector are invalid. There is no provision under s. 39 of the Act that the consent of Government should be given after the agreement is executed, and that such consent should be notified by a Resolution in the Gazette. EZRA v. SECRETARY OF STATE (1902)

I. L. R., 30 Calc., 36; s.c., 7 C. W. N., 249

——ss. 11, 18, 31 and 33—

—*Apportionment of compensation—Award by ... effect of, when there has been no reference ... Civil Court—Right of claimants to*

LAND ACQUISITION ACT (I OF 1894) —*continued.*

——ss. 11, 18, 31 and 33—*concluded.*

bring suit in Civil Court for adjudication of their claims in such case—Limitation—Construction of Statute—Construction of grant—Hindu widow—Life-interest, amount of compensation due to—As between the claimants *inter se*, an award by a

award has been made by the Collector, but has not

a reference under s 18 of the Act, can maintain, against any

or a part

to establish

under the

Land Acq

Ram Bandhu Rai (1881), I. L. R., 7 Calc., 88S, followed. The provisions of s. 33 of the Land Acquisition Act show that the limitation provided by proviso (*a*), sub-s (2), of s. 18 of the Act is not intended to be an absolute limitation as to time. PUNNABATI DAI v. PUDMANUND SINGH (1903)

[7 C. W. N., 538

—— ss. 19 (d) and 23—

—*Level-crossing across a private road*—A person is entitled to compensation, under clause *fourthly* of s 23 of the Land Acquisition Act, in respect of a Railway Company having made the "level-crossing" across his private road giving access to his house, if he can show that he sustained damage or loss by reason of his other property having been injuriously affected. *Glover v. The North Staffordshire Railway Company (1851), 16 Ad & El. Q. B. R., New Series, p. 912; the Metropolitan Board of Works v. McCarthy (1874), 7 H. L. E. & I. App. 243,* referred to. A Collector, in making a reference to the Civil Court, should state the grounds on which the amount of compensation was determined. MADHUSUDAN DAS v. COLLECTOR OF CUTTACK (1901) . . 6 C. W. N., 403

—— s. 23—

—— s. 30—

—*Lands waste from time immemorial taken up—Compensation awarded—Amount claimed by*

LAND ACQUISITION ACT (I OF 1894)
—*continued.*

——s. 30—*concluded.*

mirasidars and shrotriemdars—Persons entitled—Certain lands which had been waste from time immemorial were taken up by Government, and compensation was awarded Claims were made by the *mirasidars* for the amount so awarded. The rights of the Government in the lands had been alienated by Government to certain *shrotriemdars*, who also claimed to be entitled to the amount awarded as compensation. *Held*, that the *shrotriemdars* were entitled. SIVANTHA NAICKEN *v.* NATTU RANGA CHARI (1902)
[I. L. R., 26 Mad., 371

—— ss. 30 and 53—

—*Civil Procedure Code, s 32—Parties—Reference by Collector as to apportionment of compensation—Addition by Judge of party to reference*—Where, under s. 30 of the Land Acquisition Act,

CHAND *v* JAGANNATH PRASAD (1902).
[I. L. R., 25 All., 133

—— s. 31—

See ante, ss. 11, 18, 31 AND 33.

—— ss. 31 and 32—

—*Land taken up for public purposes, such land being in possession of a Hindu widow holding in right of her deceased husband—How compensation in respect of such land should be allotted*—Where land which was taken up by the Government under the Land Acquisition Act for public purposes was held at the time by two widows holding the usual

—— s. 32—

—*Person having "no power to alienate"*—

AYERGAL *v.* AHAMMED ALI RAJA AYERGAL (F B, 1902) . . . . I. L. R., 26 Mad., 287

—— s. 33—

See ante, ss. 11, 18, 31 AND 33.

LAND ACQUISITION ACT (I OF 1894)
—*concluded.*

—— ss. 39 to 41, 48, 50(2)—

See ante, ss. 6 TO 8, 9 (2), 11, 39 TO 41, 48, 50 (2).

—— s. 53—

See ante, ss. 30 AND 53.

LAND IMPROVEMENT LOANS ACT, 1883 (XIX OF 1883).

—— s. 7 (1) (*a*)—

—*Revenue Recovery Act (Mad. Act II of 1864), s. 42—Advance to owner on two pieces of land—Security taken on one alone—Sale of the other piece in respect of advance—Validity*—N held two pieces of land on *patta*, and obtained a loan from Government, under Act XIX of 1883, for the improvement of one of them, namely, No 315. The

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876).

See BENGAL TENANCY ACT, s 60
[5 C. W. N., 482

See RENT, SUIT FOR 7 C. W. N., 720

—— ss. 42, 44 and 78—

—*Land registration—Registration of share in an estate—Share in specific mouzas in an estate*—The Land Registration Act (Bengal Act VII of 1876)

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*concluded.*

—— ss. 42 and 78—

—*Land registration—Co-sharer's interest by amicable settlement—Registration of proprietor's share—Partition Act (Ben. Act V of 1897), s. 12*—The Land Registration Act (Ben. Act VII of 1876) requires the registration by the various proprietors of their shares in the estates only, and does not seem to contemplate a registration of shares in separate *mouzas* in the estates. The provisions of s. 42 of the Act have therefore no application to the case of a co-sharer who, by an amicable arrangement between the co-sharers, has been placed in possession of a larger share than his registered share in some *mouzas*, and of a less share or no share in

—— s. 56—

See Public Servant.
[I. L. R., 29 Calc., 236

—— s. 78—

See ante, ss. 42, 44 and 78.

See ante, ss. 42 and 78.

—*Actual registration—Order of Civil Court for registration.*—The Land Registration Act requires actual registration of name in order to enable a person to recover rent, and a mere order of the Civil Court for registration is not sufficient. Ugra Mohun Thakur *v.* Bedeshi Roy (1900)
[5 C. W. N., 360

—— s. 82—

LAND-HOLDERS.

—— responsibility of—

See Rioting . I. L. R., 28 Calc., 504

LAND-REVENUE.

See Contribution, Suit for—Voluntary Payment.
[I. L. R., 26 Bom., 437

See Dekkhan Agriculturists' Relief Act, s. 3 . *I. L. R.*, 25 *Bom.*, 344

See Evidence—Civ Cases—Maps.
30 Calc., 291

LAND-REVENUE—*continued.*

See Interest—Miscellaneous Cases—Arrears of Revenue.

See Jurisdiction of Civil Court—Rent and Revenue Suits.

See Limitation Act, 1877, Sch. II, Arts. 120 and 110.
[I. L. R., 25 Bom., 556

See North-West Provinces Rent Act, s. 23 . . I. L. R., 24 All., 465

See Pensions Act, s. 3 and s. 6.
[I. L. R., 25 All., 73

See Sale for Arrears of Revenue.

1.—Assignment of—*Direction by Government to holder on raiyatwari tenure to pay crop assessment to charity in lieu of direct payment by Government—Effect—Rights of trustees of charity—Limitation Act (XV of 1877), Sch. II, Arts. 110, 120.*—Prior to 1863, Government had been paying from the public treasury R233-5-3 to the trustees of a charity (of which the plaintiffs in this suit were

appeared to have been performed. In 1893, the assessment for the first crop was raised, the net increase being payable to Government direct. In 1898, the trustees brought the present suit to re-

with its rights to such revenue Assuming the plaintiffs were assignees of Government, they could not proceed under ss 2 and 42 of the Revenue

Limitation Act, and consequently it fell within Art. 120. Kasturi Gopala Ayyangar *v.* Anantaram Thivari (1902) . . I. L. R., 26 Mad., 730

2.—Enhancement of assessment—*Land-revenue in Bombay—Bombay Act II of 1876—Sale of land by Government to a purchaser assessed at a certain rate—Subsequent enhancement—Vendor and purchaser—Estoppel—Evidence Act (I of 1872), s. 115*—Certain lands in Bombay, consisting of three separate plots, were held by the Trustees of the Free Church of Scotland Mission under a grant from Government (no deed, however being executed) for the purposes of a school for native girls. No assessment was paid for a part of

LAND-REVENUE—*continued.*

the land, and a merely nominal assessment was paid for the rest Being desirous of transferring the school to another locality, the Trustees obtained the consent of Government to sell the land, and, in order to put the Trustees in a position to sell, certain indentures were executed to the Trustees. Plot 1 was conveyed by Government to them, "their heirs and assigns for ever", subject to a right of resumption, but without any mention of assessment. Plots 2 and 3 were conveyed by Government to them, "their heirs, executors, administrators and assigns for ever," but in this case the conveyance was "subject to the

Government tax." The Trustees desired to accept this offer, and communications took place between them and Government with reference to it. On the 21st June, 1887, they wrote to Government stating that it was most desirable that the offer should

ment to ask the Collector of Land-revenue to say "what the land would be assessed at for the purposes of the land-revenue, it being assumed that the land was of the pension and tax tenure" On the 11th July, 1887, the Government passed a Resolution in reference to this request, as follows: "The land in question will be liable in the purchaser Mr Janardhan Gopal's hands to be assessed under the rules ordinarily applicable to land of the same description The Collector should be desired, on the application of either the Secretary of the Free Church Mission or of the purchaser, Mr Janardhan Gopal, to state

be assessed at the rate of nine pies per square yard

to the payment of taxes, rates, charges, assessments

LAND-REVENUE—*continued.*

January, 1888, the land was conveyed to Janardhan Gopal, the purchaser. The parties to the deed were the Trustees of the Mission, the Secretary of State, and the said Janardhan Gopal, and it recited that the Trustees had agreed for the absolute sale of the land to Janardhan Gopal, and with the consent of Government it conveyed the same to him,

property became vested (under a partition) in the plaintiff, who was Janardhan Gopal's son. Until 1899 the assessment of nine pies per square yard was paid, but in August, 1899, the plaintiff received from the Collector a notice under s. 8 of Bombay Act II of 1876 that the assessment was enhanced to six annas and six pies per square yard per annum. The plaintiff thereupon filed this suit in the Court of the Revenue Judge under s 14 of Bombay Act II of 1876, contesting the legality of the enhancement The Revenue Judge dismissed the suit. On appeal to the High Court: *Held, reversing the decree and setting aside* the order of enhancement, that the plaintiff had a right to hold the land for ever on payment of assessment at the rate of nine pies per square yard per annum, and that the Government had no right to enhance the said rate Janardhan Gopal had purchased the property out-and-out for its full value To such a purchaser the right to enhance the assessment should in all fairness have been clearly disclosed

of the purchase, was, under the circumstances, such as to create and encourage in the purchaser as a reasonable man the belief that he was purchasing property substantially worth R33,000, and that Government were not silently reserving to themselves an unfettered right to destroy the value of that property and practically to confiscate that which had been sold. DADOBA JANARDHAN *v.* COLLECTOR OF BOMBAY (1901) . . . . I. L. R., 25 Bom., 714

3.——————*Land-revenue in Bombay—Bombay Act II of 1876—Purchase of land from Government—Encroachment—Acquisition of land under s 26 of Bombay Act II of 1876—Vendor and purchaser—Estoppel.*—The plaintiff was the owner of certain land in Bombay, consisting of three separate plots which had been bought from Government at different times. Plot No. 1 had been bought by the plaintiff's father in 1880, to whom the Collector of Bombay, with the

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880)—*concluded.*

——s. 8—*concluded.*

not appear to hold their lands on any terms agreed upon between the *khot* and themselves, such tenants are entitled, under s. 8 of the *khoti* Settlement Act (Bombay Act I of 1880) [illegible]

—— s. 33—

See Res Judicata—Matters in Issue—Suit for Rent

[I. L. R., 26 Bom., 25

KIDNAPPING.

1.—**Lawful guardianship**—*Penal Code (Act XLV of 1860), ss. 361, 363, 366—Kidnapping from lawful guardianship—"Lawful guardian"—Continuance of parent's possession though physical possession temporarily with another.*—*S*, a girl of the age of eight years, lived ordinarily under the guardianship of her father A sister of *S* was married to a nephew of one *K*, and, with her husband, lived in the house of *K* *S*, with her father's knowledge and consent, visited her sister in *K*'s house, and had [illegible]

KIDNAPPING—*concluded.*

purpose and for a limited time does not determine the father's rights as guardian or his legal possession for the purposes of the criminal law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor, the latter must be held to be in the father's possession or keeping, even though the actual possession should be temporarily with a friend or other person. Jagannadha Rao *v.* Kamaraju (1900)

[I. L. R., 24 Mad., 284

2.—**Offence when complete.**—The offence of kidnapping is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as the minor is kept out of such guardianship. Chekutty *v.* Emperor (1902)

[I. L. R., 26 Mad., 454

3.—**Rioting with intent to abduct**—*Indian Penal Code (Act XLV of 1860), ss. 147, 366—Abduction—Rioting, charge of, whether it would necessarily fail if intention of abduction is not proved* —Where a person was charged for abduction, under s 366, Indian Penal Code, and also for rioting, under s. 147, with the common object of abducting a certain woman, and the Court below convicted the accused under s 147, but acquitted him of the offence under s 366 on the ground that the intention of the abduction as mentioned in the charge was not proved: *Held* that, the intention of the abduction not being proved, and a charge of bare abduction *per se* (without the intention pointed out in the different sections dealing with the subject) not being an offence under the law, the conviction under s 147 was bad. Khalil Nasya *v.* Emperor (1901) . . . . . 6 C. W. N., 208

KNOWLEDGE.

See Acquiescence.

—— of commission of offence—

See Rioting . I. L. R., 28 Calc., 504

KUMAON AND GARHWAL.

—**High Court for**—For the purposes of the Legal Practitioners' Act, 1879, the Commissioner of Kumaun is the High Court for the Province of Kumaun and Garhwal. In the matter of the petition of Padma Dat Joshi (F.B., 1902)

[I. L. R., 24 All., 348

L

[illegible]OURER.

See Act—1859—XIII.

[illegible]ES.

See Specific Performance—Generally.

[I. L. R., 30 Calc., 265

LAND-REVENUE—*continued.*

the land, and a merely nominal assessment was paid for the rest. Being desirous of transferring the school to another locality, the Trustees obtained the consent of Government to sell the land, and, in order to put the Trustees in a position to sell, certain indentures were executed to the Trustees Plot 1 was conveyed by Government to them, "their heirs and assigns for ever", subject to a right of resumption, but without any mention of assessment. Plots 2 and 3 were conveyed by Government to them, "their

(*inter alia*) that the whole property should be conveyed to him "as freehold tenure or for a nominal Government tax" The Trustees desired to accept this offer, and communications took place between them and Government with reference to it. On the 21st June, 1887, they wrote to Government stating that it was most desirable that the offer should be accepted, but that the purchaser required that the amount of assessment on the land should not exceed what was payable in respect of pension and tax tenure in the same locality, and they requested the Government to ask the Collector of Land-revenue to say "what the land would be assessed at for the purposes of the land-revenue, it being assumed that the land was of the pension and tax tenure." On the 11th July, 1887, the Government passed a Resolution in reference to this request, as follows: "The land in

of the purchaser, Mr Janardhan Gopal, to state what the assessment of the land-revenue will be and what are the rules affecting the amount of the assessment" Acting on this Resolution, Messrs Ardesir, Hormasji & Co, as attorneys for both the Trustees and the purchaser, wrote to the Collector on the 14th July, 1887, setting forth the above Resolution, and requesting him to furnish the desired information On the 25th July, 1887, the Collector replied: "I have the honour to inform you that the land will be assessed at the rate of nine pies per square yard

to the payment of taxes, rates, charges, assessments leviable or chargeable in respect of the premises or

LAND-REVENUE—*continued.*

the Trustees had agreed for the absolute sale of the land to Janardhan Gopal, and with the consent of Government it conveyed the same to him, "his heirs, executors, administrators and assigns

charged the said Janardhan Gopal, his heirs, exe-

son. Until 1899 the assessment of nine pies per square yard was paid, but in August, 1899, the plaintiff received from the Collector a notice under s. 8 of Bombay Act II of 1876 that the assessment was enhanced to six annas and six pies

should in all fairness have been clearly disclosed.

conduct of Government, coupled with the statement of Government made on their behalf for the purposes

sold. DADOBA JANARDHAN *v* COLLECTOR OF BOMBAY (1901) . . . . . I. L. R., 25 Bom., 714

3.——————*Land-revenue in Bombay—Bombay Act II of 1876—Purchase of land from Government—Encroachment—Acquisition of land under s. 26 of Bombay Act II of 1876—Vendor and purchaser—Estoppel.*—The plaintiff was the owner of certain land in Bombay, consisting of three separate plots which had been bought from Government at different times. Plot No. 1 had been bought by the plaintiff's father in 1880, to whom the Collector of Bombay, with the

LAND-REVENUE—*continued.*

sanction of Government, had sold it at "the rate of R1 a square yard and ground rent at 30 pies per *burga* of 60 square yards per annum." Plot No 2 was acquired by encroachment, and was sold in 1884 to the plaintiff's father by the Collector under cl. 2 of s 26 of Bombay Act II of 1876, five times the value of the land being paid, and assessment being charged as provided by that section. Plot [illegible]

[illegible] year the Collector served the plaintiff with a notice enhancing the assessment to three annas per square yard per annum. The plaintiff thereupon filed this suit under s. 14 of Bombay Act II of 1876. The Revenue Judge dismissed the suit, with costs. [illegible] e, that the [illegible] assessment. [illegible] ated to be at a ground rent of 30 pies per *burga,* and this established a specific limit to the assessment Plot No 2 was sold by the Collector under s 26 of Bombay [illegible]

[illegible] the reasonable inference from the known facts was that the limit was fixed as in the case of plot No. 1. JETHABHOY RUTTONSEY *v.* COLLECTOR OF BOMBAY (1901) . . . I. L. R., 25 Bom., 752

4.——————*Land reclaimed from sea granted in perpetuity by village officers at fixed rent—Grant adopted by Government—Money expended on land in belief that the assessment would not be enhanced—Estoppel*—In 1801 the *Gáokars* (village officers) of a village, who were responsible to Government for the revenue, granted the land in suit to the plaintiff's grandfather, who undertook to keep in repair a certain embankment necessary for the purpose of protecting the village from the sea. The writing given by the *Gáokars* [illegible]

[illegible] to treat the land in question as '*Katuban,*' that is, as land held in perpetuity at a fixed rent. The plaintiff and his predecessors had improved and spent money on the land. It was assessed as '*Katuban*' until [illegible]

[illegible] was '*Katuban*' *Held* that the plaintiff was entitled to recover the sum claimed. The facts of the case brought it within the equitable principle which protects one who expends money on the improvement of land under an expectation of an interest therein created or encouraged by its owners. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* DATTATRAYA RAYAJI PAI (1901) . I. L. R., 26 Bom., 271

5.——————*Bombay City Land-revenue Act (Bom. Act II of 1876), ss 8 and 9—Settlement of assessment—Meaning of "settlement"—Notice of enhancement—No necessity of* [illegible]

[illegible] tenure at a fixed assessment, and, secondly, because there had been no "settlement" with him as required by Bombay Act II of 1876, inasmuch as he had received no prior notice from the Collector of the intention to enhance the assessment. *Held* (1) that there was no evidence in the case to show that the assessment had been permanently fixed; (2) that the words "settlement of assessment" in s. 9 of the Bombay City Land-revenue Act (Bom. Act II of 1876) do not by themselves imply the necessity of prior notice to the superior holder before the assessment is enhanced: they mean no more than that when the settlement is fixed the fact shall be communicated to the superior holder. VINAYAK ATMARAM *v.* COLLECTOR OF BOMBAY (1901)

I. L. R., 26 Bom., 339

6.—**Local Fund cess**—*Bombay Act III of 1869, s. 8—Liability for Local Fund cess—Village given by ruling Chief by way of maintenance (jiwak giras), liability to Local Fund cess of—Superior holder—Voluntary payment* [illegible]

LAND-REVENUE—*concluded.*

of the village, and as such responsible to Government for the Local Fund cess This view was subsequently confirmed by the Secretary of State. Thereupon the plaintiff filed this suit for a declaration that the defendants were not the superior holders of the village and had no right to pay the Local Fund cess direct to Government, but that he was entitled to recover the same from them and pay it over to Government. He also prayed to recover the cess which he had paid for the village

to the declaration prayed for The plaintiff was not the 'superior holder' of the village of Kamijala, and was not responsible for the Local Fund cess nor under any liability to pay it. The supreme holders under s 106 of the Land-revenue Code (Bombay Act V of 1879) were the defendants as *Bhayats*, to whom the village had been granted as '*jiwak giras*' They were primarily responsible to Government. *Held, also*, that the plaintiff, as Chief of the State, had such an interest in the village of Kamijala as would entitle him to pay the cess to Government if there were any danger of forfeiture in consequence of non-payment by the defendants In such a case s. 69 of the Contract Act (IX of 1872) would enable him to sue for reimbursement. But in the present case it did not appear that any such emergency had arisen or was likely to arise. S. 70 of the Contract Act had no application, for it could not be said that the plaintiff had lawfully made payments for the defendants He had no authority from them, and was under no obligation to pay. The plaintiff was, therefore, not entitled to recover the cess paid from 1893 to 1895 as claimed in the plaint GORDHANLAL *v.* DARBAR SHRI SURAJMALJI (1902) . . . I. L. R., 26 Bom., 504

LAND-REVENUE ACT (BOMBAY).

See BOMBAY LAND-REVENUE CODE.

LAND-REVENUE SALES ACT (BENGAL), 1859.

See ACT—1859—XI.

LAND-TENURE.

See SERVICE TENURE.
[I. L. R., 26 Mad., 403

LANDLORD AND TENANT.

LANDLORD AND TENANT—*continued.*

See ABATEMENT OF RENT

See ACQUIESCENCE . 7 C. W. N., 170

See APPORTIONMENT OF RENT.
[7 C. W. N., 453

See BENGAL TENANCY ACT.

See CO-SHARERS.

See EASEMENT . I. L. R., 29 Calc., 363

See EJECTMENT, SUIT FOR.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

See JOINT TENANCY.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.

See KABULIYAT.

See LAND ACQUISITION ACT (X OF 1870).
[I. L. R., 28 Calc., 146

See LAND ACQUISITION ACTS (XVIII OF 1885 AND I OF 1894).
[I. L. R., 30 Calc., 801

See LEASE.

See LIMITATION—QUESTION OF LIMITATION . . . 7 C. W. N., 294

See LIMITATION ACT, 1877, SCH. II—

ARTS. 120 AND 110;
[I. L. R., 25 Bom., 556

ART. 139.

LANDLORD AND TENANT—*continued.*

See MADRAS RENT RECOVERY ACT.

See MESNE PROFITS—MODE OF ASSESSMENT AND CALCULATION.
[I. L. R., 30 Calc., 536

See NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . 6 C. W. N., 466

See ONUS OF PROOF—LANDLORD AND TENANT.

See PARTITION—RIGHT TO PARTITION—PARTITION OF PORTION OF PROPERTY.
[5 C. W. N., 185

See PRINCIPAL AND AGENT—

AUTHORITY OF AGENTS;
[I. L. R., 30 Calc., 207

LIABILITY OF PRINCIPAL.
[I. L. R., 30 Calc., 207

See PUNJAB LAWS ACT.
[I. L. R., 30 Calc., 635

See RENT, SUIT FOR

See RES JUDICATA—

ESTOPPEL BY JUDGMENT;
[I. L. R., 28 Calc., 109
6 C. W. N., 66

MATTERS IN ISSUE;
[I. L. R., 28 Calc., 17

COMPETENT COURT—REVENUE COURTS.

See RIGHT OF OCCUPANCY.

See SALE FOR ARREARS OF RENT.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 28 Calc., 116, 532

See TENURE—MUKADDAMI TENURE.
[I. L. R., 23 All., 67

See TITLE—MISCELLANEOUS CASES.
[I. L. R., 25 Mad., 507

—— ejectment—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—NORTH-WESTERN PROVINCES.
[I. L. R., 23 All., 360

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 28 Calc., 738

See LIMITATION ACT, 1877, SCH. II, ART 144—ADVERSE POSSESSION.
[I. L. R., 26 Bom., 442

—— ejectment: notice to quit—

See RULES MADE UNDER ACTS—BENGAL TENANCY ACT . I. L. R., 28 Calc., 590

—— exchange of leasehold rights —

See TRANSFER OF PROPERTY ACT, s. 118.
[6 C. W. N., 905

LANDLORD AND TENANT—*continued.*

—— improvements—

See MALABAR LAW.
[I. L. R., 25 Mad., 568

—— liability of heirs for rent—

See INHERITANCE . 5 C. W. N., 189

—— rate of rent—

See EVIDENCE—PAROL EVIDENCE—EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES.
[6 C. W. N., 242

See KHOTI SETTLEMENT ACT, s. 8.
[I. L. R., 27 Bom., 71

—— suit for alluvial land—

See LIMITATION ACT, 1877.
[I. L. R., 29 Calc., 518

—— transfer by tenant—

See POSSESSION—SUITS FOR POSSESSION.
[7 C. W. N., 607

1. CONSTITUTION OF RELATION.

(a) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

1.—*Receipt of rent from a person as sarbarahakar—The original tenant's name also appearing on the receipt as tenant, effect thereof—Whether it amounts to recognition of the sarbarahakar as tenant.*—The mere fact of rent having been received from a certain person does not amount to a recognition of that person as a tenant. Where the old tenant's name occurred in the rent receipts under the heading "tenant's name," and the name of the purchaser from the tenant occurred under a different heading as *sarbarahakar*: *Held* that the landlord by these receipts did not mean to recognise the purchaser as a tenant. *Bhojohuree Bunik* v. *Aka Golam Ali (1871), 16 W. R., 97; Gaur Lal Sirkar* v. *Rameswar Bhumik (1870), 6 B. L R., App, 92,* relied on. *Gudadhur Banerjee* v. *Khettur Mohun Surmah (1867), 7 W. R., 460; Ram Gobind Roy* v. *Dushoobhoojah Debee (1872), 18 W. R., 195,* distinguished. RASAMOY PURKAIT *v.* SRINATH MOYRA (1902) . . . . . 7 C. W. N., 132

(b) ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT.

2.—*Suit by landlord for possession—Denial of landlord's title by tenant—Effect of payment of rent—Onus of proof—Payment of rent by agent of tenant—How far principal bound—Rent paid by mistake—Adverse possession—Possession—Acts of ownership on part of unclaimed land.*—In 1898 the plaintiff brought this suit, against the Secretary of State and the Collector of Salt Revenue, to recover possession of certain land which had for many years been in actual possession of the Customs officials of Government, and for which these officials had paid rent to the plaintiff and his predecessor. In their

LANDLORD AND TENANT—*continued*

1. CONSTITUTION OF RELATION—*concluded.*

(b) Acknowledgment of Tenancy by Payment of Rent—*concluded*

written statement the defendants claimed that the land belonged to Government, and pleaded that, although it was true that they had paid rent for some years to the plaintiff, yet that such payments had been made by mistake *Held* that the admission by the defendants that they had paid rent to the plaintiff

2. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION.

3.—Disturbance by landlord of peaceable possession—*Suspension and apportionment of rent.*—A landlord is not entitled to recover rent for the lands in the possession of a tenant, who holds a tenure under a lease which reserves rent at a certain rate per *bigha*, when he has dispossessed the tenant from the other lands of the tenure, inasmuch as it cannot be said that each *bigha* of land is separately assessed and separately chargeable with rent. *Dhunput Singh* v *Mahomed Kazim Ispahain (1896), I. L R., 24 Calc., 296*, distinguished. Harro Kumari Chowdhrani v Purna Chandra Sarbogya (1900) . I. L. R., 28 Calc., 188

4.—Landlord bound to put tenant into

[5 C. W. N., 816

5.—Ouster of tenant by paramount owner—*Claim by tenant against his lessor for compensation for such ouster—Lease—Covenant for quiet enjoyment—Damages—Measure of damages—Transfer of Property Act (IV of 1882), s. 108, cl. (c)*—The words "without interruption",

do so, he must indemnify the lessee A held land under a lease granted by *B* for eleven years *B* had no title to the land, which really belonged to *C*. In

LANDLORD AND TENANT—*continued.*

3 OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT.

6.—Confusion of boundaries.—Where, owing to the negligence of the tenant, the land demised becomes confounded with other lands, the tenant, unless he can ascertain the former, is bound to make good to the landlord the quantity of the land to which the latter is entitled. Ismail Khan Mahomed v. Broughton (1901)

[5 C. W. N., 846

4 LIABILITY FOR RENT.

7.—Interruption of tenancy—*Rent-suit—Disturbance of quiet possession by landlord—Liability to pay rent—Eviction, not complete*—The law does not require that there should be a complete eviction of the lessee in order that he may be exempted from liability to pay rent *Dhunput Singh* v. *Mahomed Kazim Ispahain (1896), I L. R., 24*

... to claim

... which he

Lali-

[5 C. W. N., 353

5 PAYMENT OF RENT.

Generally.

8.—*Lease by tenant-for-life—Rent payable during month—Death of tenant-for-life prior to end of month—Claim by assignee of tenant-for-life*

[I. L. R., 26 Mad., 540

6. NATURE OF TENANCY.

9.—Dwelling house—*Transfer of Property Act (IV of 1882), s. 111—Determination of tenancy—Commencement of occupation of dwelling house—Profession by tenant to hold adversely to landlord—No determination of tenancy*—Where a

LANDLORD AND TENANT—*continued.*

6. NATURE OF TENANCY—*continued.*

tenant enters into occupation of a dwelling-house as

of Property Act, limitation does not run against the landlord, though the tenant may, in fact, profess to hold the property adversely to the landlord. *Srinivasa Ayyar* v. *Muthusami Pillai, I. L. R., 24 Mad., 246,* and *Seshamma Shettati* v. *Chickaya Hegade, I. L. R., 25 Mad., 507,* followed. RAMASWAMI NAIK v THAYAMMAL (1902)

[I. L. R., 26 Mad., 488

10.—Expectation of grant of land—*Construction—Expectation raised and acted upon of a grant of land from the proprietor to a person encouraged by him to lay out money thereon—Irrigation canal—Waste land of Government—Stipu-*

by Government, to be made, in the greater part, upon their waste land, at the expense of the predecessor in estate of the plaintiffs. Other land of less extent was obtained for the same purpose, from private owners. The makers of the canal, who were father and son, held in succession, for the term of the District Revenue Settlement, a lease of the dues collected from those who frequented the above tracts for pasturage and sparse cultivations. *Held* that the undertakers acquired a proprietary interest in so much of the Government lands, taken for the purpose of the canal, as was required for its con-

an end with the termination of the current settlement, the son obtained from Government a grant of an estate assessed to the revenue in the tracts within reach of the irrigation, together with an *inam* of R5,000 a year for two lives. Afterwards, in a *sanad,* stating the grant of this estate, Government expressly reserved the right to take possession and control of the canal and to manage the irrigation for as long as they wished, without paying compensation. This

LANDLORD AND TENANT—*continued.*

6.—NATURE OF TENANCY—*continued.*

possession was taken This suit was brought for a declaration of the rights acquired by the makers of the canal, and for other relief, on the title of their descendants, the plaintiffs. *Held* that, at the date of

the effect of the reservation of the grant was that Government could assume the control of the canal and the irrigation without being in the position of receivers, managers or trustees for the proprietors, or accountable to them for the profits The reservation did not empower Government to confiscate the canal, nor did they acquire any proprietary right in

11.—Permanent tenancy—*Suit for ejectment—Tenancy, origin of which not known—Presumption as to a tenancy being a permanent one—Long possession, transfer of the holding by succession and purchase, erection of pucca buildings with the permission of the landlord, by successive tenants, whether sufficient for a presumption that the tenancy is a permanent one*—Although the

ure by
land-
house
n there
added
having

from time to time been transferred by succession and purchase, in which the landlord acquiesced or of

12.——————*Long possession, and instances of transfer and succession—Notice—Homestead land in municipal town.*—The fact of long possession, and instances of transfer and succession, may raise a presumption in favour of the permanency of a tenancy. *Taruk Podo Ghosal* v. *Shyama Churn Napit (1881), 8 C. L. R., 50; Prosunno Coomaree* v. *Sheikh Rutton Bepary (1877), I. L. R., 3 Calc., 698,* referred to DURGA MOHUN DAS v. RAKHAL CHANDRA ROY CHOWDHURY (1901) . . . 5 C. W. N., 801

13.—————— *Ejectment—Origin of tenancy—Presumption as to permanent character of tenancy.*—Where tenancies were created by *kabuliyats* or *pattas* which did not contain any words of inheritance, and which limited the tenant's right to the term of the possession of the landlord, who

LANDLORD AND TENANT—*continued.*

6. NATURE OF TENANCY—*continued.*

happened to be a *mutwalli*, and there was no recognition of the incidents of old leases in the grant of new leases to new tenants, except payments of rents at

sufficient to warrant the inference that the tenancy was, when first created, intended to be permanent, or was subsequently, by agreement, converted into

permanent, and had not subsequently been converted into such. ISMAIL KHAN MAHOMED *v.* KALI KRISHNA MONDOL (1901) . 6 C. W. N., 134

15.——————*Ejectment—Origin of tenancy—Land whether originally agricultural—Successive transfers, and payment of rent at unvaried rate—Presumption as to permanent character of tenancy* —Where a tenancy was created by a *kabuliyat* and *patta* not containing any words of inheritance or of perpetual tenancy, the mere facts that the land has been held by tenants at an unchanged rate of rent for a very long period, and that it has been the subject of successive transfers, do not warrant the inference that the tenancy was, when

inference that the tenant had permanent rights in the land where it is clear that the land had long ceased to be agricultural: the words "you are to enjoy the land with great pleasure (*param sukhe*)" do not create a permanent tenancy ISMAIL KHAN MAHOMED *v* NILRATAN MONDOL (1902)

[6 C. W. N., 352

16.——————*Tenancy, permanent or not—Ejectment—Heritable right—Evidence—Presumption—Onus* —In the absence of words importing it, the hereditary character of a tenure may be supplied by evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son *Baboo Gopal Lall Thakur* v. *Tiluck Chunder Rai (1865), 10 M I. A. 183, at p. 191*, and *Rajah Satyasaran Ghoshal* v. *Mohesh Chunder Mitter (1869), 2 B. L. R. (P. C.) at p 23*, followed. The presumption of the permanency of a holding was legally made in a case where the following facts were found, *viz*, possession at a uniform rent for some 100 years, the property descending from father to son, various transfers, many of

years In a suit for ejectment, where the defendant sets up a permanent tenancy, the *onus* is upon the defendant to show this A permanent tenancy is ... urchaser of ... ntaining no ... icy of the ... confirming the pre-existing holding, and not of creating a new one. *Held*, upon a construction of the *patta* of the 21st October, 1835, that it was only a confirmatory *patta*, in fact, a *kharija patta*, and that it

observations would apply to the *pattas* dated 5th November, 1835, and 29th May, 1838. ISMAIL KHAN MAHOMED *v.* AGHORE NATH MUKERJEE (1903)

[7 C. W. N., 734

17.——————*Void lease—Lessee's adverse possession—Disclaimer of landlord's*

was obtained to the leases. These three leases were not registered. The Bombay Minors' Act came into force in the Panch Mahals in 1885, and in 1886 the

LANDLORD AND TENANT—*continued.*

6. NATURE OF TENANCY—*continued.*

Collector obtained a certificate of administration to the plaintiff's property under that Act. The plaintiff came of age on the 8th December, 1895, but the administrator did not hand over his property to him on that day. On the contrary, the then Collector, by his own order, dated the 20th November, 1895 (Ex-

sanction from the Government or the District Court by which he had in the first instance been granted a certificate of administration (Exhibit 62). This lease

that there can be adverse possession of a limited interest in property as well as of the full title as owner. As it appeared that the defendant agreed

been in adverse possession as a permanent tenant. *Held, further,* that, as the plaintiff had not brought the suit within three years of attaining his majority, the defendant had obtained by adverse possession a

right to hold the lands as against the plaintiff as a permanent tenant. *Per* BATTY, *J.*—The authorities show that a tenant in India is not precluded by an admission of tenancy from showing that the nature

person representing the landlord's interests, of a right inconsistent with that claimed by the landlord *to treat him as a tenant-at-will or from year to year,* would be a disclaimer of the landlord's title. *Vivian* v. *Moat (1881), 16 Ch. Div., 730,* relied on. A landlord merely by receiving rent cannot preserve his right to other claims continuously denied by the tenant. The fact that such assertion and enjoyment are not challenged does not change their adverse

(*per* BATTY, *J*): "A document inadmissible under s. 49" (of the Registration Act) "could not, I think, be used as evidence of delivery of possession." But, seeing that the Legislature has advisedly rejected,

by a person whose claims were admittedly limited to the rights enumerated in such document. FATESINGJI DIPSANGJI *v.* BAMANJI ARDESHIR DALAL (1903) . . . . I. L. R., 27 Bom., 515

7. HOLDING OVER AFTER TENANCY.

18.—*Tenancy from year to year—Transfer of Property Act (IV of 1882), ss. 116, 117.*—When an agricultural tenant holds over, his tenancy is renewed from year to year. *Kishore Lal Dey* v. *The Administrator General of Bengal (1894), 2 C. W. N., 503,* doubted. ADMINISTRATOR GENERAL OF BENGAL *v.* ASRAF ALI (1900) . . I. L. R., 28 Calc., 227

19.—*Lease—Tenant holding over—Assent of landlord—Liability for rent after expiry of term—Transfer of Property Act (IV of 1882), s. 116.*—The defendant held a share of a *khoti* village from the plaintiff, under a *kabuliyat* dated 30th June, 1890, for a period of five years. This suit was filed to recover from him the rent due under it for the years 1898, 1899 and 1900. He pleaded that the *kabuliyat* had expired on 30th June, 1895, and that

LANDLORD AND TENANT—*continued.*

7. HOLDING OVER AFTER TENANCY— *concluded.*

subsequently to that date he held possession, not of the plaintiff's share as his tenant, but of the whole village as managing *khot*, and that, therefore, the plaintiff was not entitled to rent from him, but was entitled merely to his (the plaintiff's) share of the profits of the village. It appeared, however, that, though the *kabuliyat* had expired in June, 1895, the plaintiff in 1897 had sued the defendant for the rent due under it for the four years 1893-1894 to 1896-1897, and had obtained a decree. *Held* that the decree in that suit was an adjudication that the defendant continued in possession after the date of the [illegible]

8. TRANSFER BY LANDLORD.

20.—*Bengal Tenancy Act (VIII of 1885), s. 72—Transfer of landlord's interest—Liability to pay rent—Payment to transferor—Notice by transferor and not by transferee.*—Where a landlord transferred his interest to another person, and the [illegible]

21.—*Mortgage of holding by landholder to tenant—Mortgagee's rights as tenant not merged in his rights as mortgagee.*—The fact of a tenant's taking a mortgage of land comprised in his holding from his landlord does not of itself extinguish the tenancy by merging the rights of the tenant in those of the [illegible]

9. ALTERATION OF CONDITIONS OF TENANCY.

ERECTION OF BUILDINGS.

22.—*Agricultural holdings—Alteration of the character of the holdings by persons entitled to*

LANDLORD AND TENANT—*continued.*

9. ALTERATION OF CONDITIONS OF TENANCY—*concluded.*

ERECTION OF BUILDINGS—*concluded.*

permanent rights of occupancy—Remedy.—The occupants of certain *tope* lands, forming portions [illegible]

right of occupancy. The appropriate remedy was for the houses to be removed and the land restored to the condition in which it was before its character had been altered. ORR *v.* MRITHYUNJAYA GURUKKAL (1900) . . . **I. L. R., 24 Mad., 65**

10. TRANSFER BY TENANT.

23.—**Bengal Tenancy Act**—*Bengal Tenancy Act (VIII of 1885), s. 85—Sub-letting, restrictions on—Validity of sub-lease granted by raiyat for more than nine years—Sub-lease registered before the commencement of the Bengal Tenancy Act.* Where a *raiyat* has, without the consent of his landlord, [illegible]

24.——————*Bengal Tenancy Act, s. 85 (3).*—The words "the sub-lease shall not be valid", in s. 85 (3), mean that the sub-lease shall not be valid against the landlord. MADAN CHANDRA KAPALI *v.* JAKI KARIKAR (1902) . . **6 C. W. N., 377**

25.——————*Bengal Tenancy Act (VIII of 1885), ss. 49, 85 (2)—Permanent lease by an occupancy-raiyat—Registration—Indian Registration Act (III of 1877), s. 17—Estoppel—Suit for ejectment of under-raiyat by purchaser of raiyat's interest—Proof of lease—Meaning of "kaimi."*—Where defendant No. 1, an occupancy-*raiyat*, executed a permanent registered lease in favour of defendant No. 2, who was put in posses- [illegible]

LANDLORD AND TENANT—*continued.*

10. TRANSFER BY TENANT—*continued.*

Tenancy Act, must be regarded as unregistered, and so wholly void under the provisions of s. 17, Registration Act. *Also* that, although the written lease was void under law, inasmuch as the defendant No. 2 had been let into the land in perfect good faith and was also in possession as an under-*raiyat*, he could not be regarded as a trespasser, but must be taken to be an under-*raiyat* holding otherwise than under a written lease. The tenancy thus being a subsisting one, t[illegible]
after
Benga
his te
has on
tion.
faity
SHEIKI

26.————— *Bengal Tenancy Act (VIII of 1885)* [illegible]

decree, and brought a suit to [illegible]

on the ground of mere prior possession, claim the protection afforded by the provisions of s. 49(*b*) of Bengal Tenancy Act to an under-*raiyat* with a *bonâ fide* subsisting tenancy, whose permanent lease is void and cannot be put in evidence. *Fazel Sheikh* v. *Keramuddi Sheikh (1902), 6 C. W. N., 916,* distinguished. RAMGATI MANDUL *v.* SHYAMA CHARAN DUTT (1902) . . . . 6 C. W. N., 919

27.—Sale of house—*Sale of house by tenant—Haq-i-chaharum by whom payable*—In the case of a customary right to receive *haq-i chaharum,* where it does not appear that the *zamindar's* right to [illegible]

28.—Sale of joto—*Jote (holding), sale of—Surplus sale proceeds, claim of, by purchaser—Transferability, question of.*—A certain *jote* was sold for arrears of rent obtained against the recorded tenant, and the purchaser of a portion of the *jote* from the latter claimed the surplus sale-proceeds representing the portion purchased by him; the defendant objected to the same on the ground that he was the purchaser of the *jote*; the Lower Courts held that defendant could not prove his purchase; the landlord was not a party. *Held* that the question of the transferability of the *jote* did not arise. AMBICA NATH ACHARJEE *v.* ADITYA NATH MOITRA (1902) . . . . . 6 C. W. N., 624

LANDLORD AND TENANT—*continued.*

10. TRANSFER BY TENANT—*concluded.*

11. PROPERTY IN TREES AND WOOD ON LAND.

29.—Trees—*Evidence—Presumption—Tenant at fixed rate—Ownership of trees standing on fixed-rate tenant's hold*[illegible]
havin
sump
prope
HARI

30.————— *Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1887), ss 2, 3, 4, 6—Malabar Compensation for Tenants Improvements Act (Madras Act I of 1900), ss. 3, 4, 7, 10—Transfer of Property Act (Act IV of 1882), ss. 108 (h), (o), 117—Right of kanomdar to remove and appropriate trees planted by himself*—A *kanomdar* is entitled, during the period of his occupation, to remove and appropriate to himself any trees that he has planted, provided that he leaves the property substantially in the state in which he received it. VASUDEVAN NAMBUDRIPAD *v.* VALIA CHATHU ACHAN (F.B., 1900)

[I. L. R., 24 Mad., 47

31.————— *Property in trees planted by a tenant on his holding.*—When a tenant, either occupancy or tenant-at-will, plants trees on his holding, the property in those trees, in the absence of custom or contract to the contrary, attaches to the land, and the tenant has no power of selling or otherwise transferring those trees. *Ajudhia Nath* v. [illegible]

32.————— *Tenants holding kudivaram rights in perpetuity—Right to trees growing on the lands—Claim by zamindar—Madras Regulation XXV of 1802—Madras Regulation IV of 1822.*— [illegible]

[I. L. R., 26 Mad., 252

12. FORFEITURE.

(*a*) BREACH OF CONDITIONS.

33.—Alienation—*Permanent lease with covenant against alienation—Subsequent aliena-*

LANDLORD AND TENANT—*continued.*

12. FORFEITURE—*continued.*

(a) Breach of conditions—*continued.*

tions—Suit to evict alienees—Maintainability—Transfer of Property Act (IV of 1882), ss 10, 111 (g)—Applicability of principles of the Act to lease executed prior to its enactment—In 1862, V leased certain land on permanent lease to Y, the in-

[I. L. R., 26 Mad., 157

34.—Payment of rent—*Relief against forfeiture for non-payment of rent, though stipulation for payment contained in compromise decree—Civil Procedure Code (Act XIV of 1882), s 244—Decree containing general stipulation—Power of Court to relieve against penalty in execution pro-*

much as the decree passed by the Court was a mere

35.—Reclamation—*Landlord and tenant—Lease—Condition—Condition binding tenant to reclaim land—Meaning of the word "reclaim"—Construction*—On the 16th June, 1885, certain marshy land adjoining the sea, comprising about 760 acres, was leased by Government to the plaintiff in perpetuity, subject to the condition (*inter alia*) that,

LANDLORD AND TENANT—*continued.*

12 FORFEITURE—*continued*

(a) Breach of conditions—*concluded.*

-alt water. the lease ought the plaintiff a declara-tion that the Government had no right to cancel the lease, and for an injunction restraining it from taking possession of the land. He contended that

SHAMRAO PANDURANG *v.* SECRETARY OF STATE FOR INDIA (1900) . I. L. R., 25 Bom., 32.

(b) Denial of Title.

36.—*Bengal Tenancy Act (VIII of 1885)—Bengal Act VIII of 1869—Suit for ejectment—Forfeiture—Denial by tenant of landlord's title—Denial in written statement.*—In a district where

vided there has been an express denial of title prior

37.—*Denial by tenant of landlord's title—Option on part of landlord to determine tenancy—Limitation Act (XV of 1877), Sch. II, Art. 139—Period of limitation as from determination of*

title. That lease had been executed by the leading

LANDLORD AND TENANT—*continued.*

12. FORFEITURE—*concluded.*

(*b*) DENIAL OF TITLE—*concluded.*

the suit was barred by limitation, inasmuch as it was brought more than twelve years after the repudiation of the tenancy by defendants: *Held* that the suit was not barred by limitation. A tenant repudiating the title under which he entered becomes liable to immediate eviction, at the option of the landlord; but, until the landlord indicates that he intends to exercise his option, the tenancy subsists This principle applies to tenancies from year to year. SRINIVASA AYYAR v. MUTHUSAMI PILLAI (1900)

[I. L. R., 24 Mad., 246

38.—*Bengal Tenancy Act (VIII of 1885)—Denial of landlord's title*—Where, in a suit for rent, defendant denied plaintiff's title, and the suit failed, and subsequently plaintiffs sued to eject the [illegible]

[6 C. W. N., 575

39.—*Estoppel—Denial of kabuliyat—Pleading.*—The rule that a tenant is estopped from denying the title of his landlord applies only to the title of the landlord who lets the tenant in. If the tenant did not obtain possession from a person who was recognised as landlord, either by express agreement, or by attornment, or by formal acknowledgment by payment of rent, he may always show that his conduct was due to mistake or ignorance of facts [illegible]

tiffs, pleaded that it was forged, and denied payment of rent under it to the plaintiffs, and failed to establish his pleas: *Held* that the tenant was not entitled to prove that the plaintiffs were not his landlords, although he had not been inducted into the land by the plaintiffs. *Protap Chandra Roy Chowdry* v. *Jogendra Chandra Ghosh (1878), 4 C. L. R., 168,* followed *Lal Mahomed* v. *Kallanus (1885), I. L. R., 11 Calc, 519,* explained. KETU DAS v. SURENDRA NATH SINHA (1903)

[7 C. W. N., 596

13 ABANDONMENT, RELINQUISHMENT OR SURRENDER OF TENANCY.

40.—*Act XII of 1881 (N.-W. P. Rent Act), s 31—Landholder and tenant—Relinquishment of part of holding—Relinquishment not made in writing.*—A relinquishment made by a tenant of his holding, when he does not hold under a lease, need not necessarily be in writing, nor need such relinquishment necessarily extend to the whole of the [illegible]

LANDLORD AND TENANT—*continued.*

14. EJECTMENT.

(*a*) GENERALLY.

41.—*Ejectment, suit for—Onus—Dispossession by tenant—Presumption*—When a tenant has been in long and peaceable occupation of land as part of an admitted tenure, it lies upon the landlord, in a suit for ejectment, to prove in the first instance that the land is his *khas* property and not the tenant's. But where a tenant cut a tree standing upon a piece of land, and within a few months of that occurrence the landlord brought a suit for ejectment, and it was found that neither party had possession of the tree and its site: *Held* that the fact of defendant's possession of a tenure of limited extent, within the plaintiff's *patni*, raises no presumption upon the defendant's seizure of a piece of land and claiming it as part of his tenure. *Rhidoy Kristo Mistri* v. [illegible]

(*b*) NOTICE TO QUIT.

42.—Period—*Bengal Tenancy Act (VIII of 1885), s 49, cl (b)—Under-raiyat—Ejectment—Notice to quit—Period of notice—Transfer of Property Act (IV of 1882), s. 106*—It is not necessary that a notice under s 49, cl. (*b*), of the Bengal Tenancy Act should mention any particular period within which the under-*raiyat* is to quit the land. *Naharullah Patwari* v. *Madan Gazi (1896), 1 C. W. N., 133,* followed. DWARKA NATH SANTRA v. BANI DASSI (1900) . I. L. R., 28 Calc., 308

43.—Reasons—*Bengal Tenancy Act (VIII of 1885), s. 49—Under-raiyati lease for an indefinite period.*—Where an under-*raiyat* holds under a written lease for an indefinite time, the *raiyat* is not [illegible]

(1902) . . . . . [illegible]

44.—Service—*Necessity of proving service of proper notice to quit—Land-revenue Code (Bombay Act V of 1879), s. 84—Issues to be raised by the Court—Practice—Procedure.*—The plaintiffs sued to eject the defendants from certain land, alleging that they were yearly tenants. The defendants *inter alia* pleaded that they were permanent tenants The plaintiffs at the hearing did not prove service of notice to quit, as required by s. 84 of the Land-revenue Code (Bombay Act V of 1879), but contended that service of notice was admitted by the defendants in their written statement. *Held* that the defendants in their written statement, although not expressly denying the receipt of notice, disputed its legality, and thereby threw on the plaintiffs the burden of proving the service of proper notice. No such proof was given. Consequently, even assuming that the defendants were

LANDLORD AND TENANT—*continued.*

14 EJECTMENT—*continued.*

(*b*) NOTICE TO QUIT—*continued.*

yearly tenants, the plaintiffs had not proved the termination of the tenancy or their right to recover possession The fact that no issue is raised as to matters which the plaintiff is bound to prove does not justify the inference that the defendant intends to admit them. The duty of raising issues rests, under the Civil Procedure Code, with the Court GANOO *v.* SHRI DEV SIDHESHWAR (1901)

[I. L. R., 26 Bom., 360

45.—Sufficiency—*Bengal Tenancy Act (VIII of 1885), s 49, cl (b)—Under-raiyat, holding out under a written lease—Notice to quit, requisites of—Notice, at the instance of the landlord, signifying to the under-raiyat that the landlord has called upon him to quit the land, whether sufficient*—In a notice to an under-raiyat to quit, s. 49, cl (*b*), of the Bengal Tenancy Act does not prescribe any period within which the under-raiyat must quit the land. All that it says is that the tenant shall not be required to quit the land before the end of the agricultural year next following the year in which the notice to quit is served by the landlord. Therefore, although

removed from the land. The notice need not be actually signed by the landlord himself It is sufficient, if the notice is at the instance of the landlord calling upon the under-*raiyat* to quit the land. MOHENDRA NATH SARKAR *v* BISWANATH HALDAR (1901) . . . . I. L. R., 29 Calc., 231

[s.c., 6 C. W. N., 183

46.————*Permanent tenancy—Origin of tenancy known—Claim of tenant to compensa-*

[6 C. W. N., 134

LANDLORD AND TENANT—*concluded.*

14 EJECTMENT—*concluded.*

(*b*) NOTICE TO QUIT—*concluded.*

47.—Suit—*Bengal Rent Act (X of 1859), s 23,*

[6 C. W. N., 199

48.———*Whether suit itself is sufficient notice—Annual tenancy*—A *raiyat*, whose tenancy can only be determined by a reasonable notice

entitling the plaintiff to eject the *raiyat* at the end of a year, mentioned in the decree, subsequent to the

[I. L. R., 29 Calc., 203;
s c., 6 C. W. N., 69

15 BUILDINGS ON LAND; RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS

49.—*Acquiescence—Compensation*—In order to raise an estoppel against the landlord, it must be shown that the landlord had purposely allowed or encouraged the tenant to build, knowing that the

LANDLORDS.

See LAND-HOLDERS.

LANDMARKS.

See EVIDENCE—CIVIL CASES—MAPS.
[6 C. W. N., 629

—*Arbitrator—Public servant—Mischief—Penal Code (Act XLV of 1860), ss 21, 434.*—The parties to a proceeding under s. 145 of the Criminal Procedure Code, by mutual consent referred the dis-

LANDMARKS—*concluded.*

pute as to the possession to the arbitration of A, and the Magistrate thereupon cancelled the proceedings under s. 145 The arbitrator, in order to define the boundary, erected certain pillars, which were destroyed by the accused, and they were in consequence convicted under s. 434 of the Penal Code. *Held* that the conviction was illegal, as *A* was not an arbitrator within the definition of s. 21, cl. (6). of the Penal Code, nor was he a public servant authorized to fix the pillars, within the meaning of s. 434 of that Code. SUNDAR MAJHI *v.* EMPEROR (1903) [I. L. R., 30 Calc., 1084

LAW REPORTS ACT (XVIII OF 1875).

——s. 3—Unreported judgments.—*Per* MACLEAN, *C J*—S 3 of the Indian Law Reports Act (XVIII of 1875) does not prevent a High Court from looking at an unreported judgment of other Judges of the same Court. MAHOMED ALI HOSSEIN *v.* NAZAR ALI (1901)
[I. L. R., 28 Calc., 289; s.c., 5 C. W. N., 326

LEASE.

See BENGAL PRIVATE FISHERIES PROTECTION ACT . 6 C. W. N., 118

See GHATWALI TENURE 6 C. W. N., 94

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R., 28 Calc., 532
" 30 Calc., 990

See KABULIYAT.

See LANDLORD AND TENANT

See STAMP ACT (I OF 1879), s 7.
[I. L. R., 26 Mad., 473

See STAMP ACT (II OF 1899), s. 5, AND SCH. I, ART. 35 . I. L. R., 25 Mad., 3

—— agreement collateral to—

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . L. R., 29 I. A., 138

—— agricultural—

See REGISTRATION ACT, s 17, CL. (*d*)
[I. L. R., 24 Mad., 421

—— breach of conditions in—

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

—— cancellation of—

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.
[L. R., 29 I. A., 203

—— exchange of leasehold rights—

See TRANSFER OF PROPERTY ACT, s. 118.
[6 C. W. N., 905

LEASE—*continued.*

—— unregistered, non-validity of—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[7 C. W. N., 90

CONSTRUCTION.

1.—"Mokurari istemrari," meaning of—*Conduct and intention of parties—Local custom—Extrinsic evidence, admissibility of—Estoppel by misrepresentation—Recognition of succession to tenancy—Relevant fact—Evidence Act (I of 1872), s. 11, cl 2*—The words "*mokurari istemrari*" in a lease do not primarily imply any heritable character in the grant, as the term *maurasi* does They imply permanency, from which, in a secondary sense, such heritable character might be inferred, it being always doubtful whether they mean permanent during the lifetime of the grantee or permanent as regards hereditary character. The words do not *per se* convey an estate of inheritance; but such an estate can be created without the addition of any other words, the circumstances under which the lease was granted and

Tulshi Pershad Singh v. Ramnarain Singh (1885), I. L. R., 12 Calc, 117; and *Agin Bindh Upadhya*

lease by reason of misrepresentation even on a point of law which is not clear and free from doubt. *Balkishen Das v. Legge (1899), I. L. R., 22 All., 149,* referred to. When the question is

were received from the successors of the grantees in

not relevant, and cannot be taken as indicative of any such intention. *Croft v. Lumley (1858), 6 H. L. C. 672, 713,* and *Kali Krishna Tagore v. Fuzle Ali Chowdhry (1883), I. L. R., 9 Calc, 645,* distinguished. NARSINGH DYAL SAHU *v.* RAM NARAIN SINGH (1903) . I. L. R., 30 Calc., 883

2.—Redemption.—*G* executed a *maurasi lease* in favour of *J*, and stipulated that *J* was to defray costs of litigation for redeeming the property under

LEASE—*continued.*

CONSTRUCTION—*continued*

lease, and that, if he succeeded in redeeming it, he was to obtain possession of it and was to pay rent to G from the date of such possession *Held* that such a document could not transfer the property leased, but was only a contract to be performed in future and upon the happening of a contingency. *Rajah Sahib Perhlad Sein* v *Doorga Persaud Tewarree (1869), 12 M. I A*, 286, and

3.—Renewal—*Mortgage of a jote—Lease,*

[6 C. W. N., 372

4.————*Offer by lessor to renew lease without stating terms, effect of—Arbitration—Award—Valuation—Civil Procedure Code (Act XIV of 1882), s. 525*—In an agreement to lease there was a proviso to the following effect:—"At the expiration of the period of the lease, in the event of a new lease not being given, the said lessor shall be at liberty to resume direct possession of the land

arbitration, the valuation made by three persons appointed by the plaintiff was not an award within

[I. L. R., 30 Calc., 831

5.—Resumption—*Deed, construction of—Patta of ancestral estate executed by members of Mitakshara family to give maintenance to female relative and her descendants—Power to resume on failure or breach of conditions—Estate, nature of, granted—Descendant not in existence at time of grant*—In 1858 a Hindu, whose family was

LEASE—*continued.*

CONSTRUCTION—*continued*

of the grant on the ground that his father could not lawfully make it without his consent. That suit was compromised by the execution, in June, 1875, of a *patta* by the plaintiff and his father of the *mauzas* in favour of J to the following effect: "J shall get an allowance of Rs. [illegible] per annum during her lifetime, and her descendants who may, under the Hindu law, become his heirs shall get one-half thereof in perpetuity, and in lieu of the same whatever profits the *mauzas* which are let by the said J under the deed ought to be [illegible] may yield annually over and above Rs. [illegible], being fixed as the *jamma* of those *mauzas*, the said *mauzas* shall be left in the possession of the said J, and on the death of the said J one half of the said *mauzas* shall permanently remain in the possession of her descendants, who may be alive at that time, and he (her) heirs according to the *shastras* on a *jamma* equal to one-half of the said *jamma* The [illegible]

womb or their children, the lessors and their representatives should have power to resume, and to take possession of the remaining one half, and the properties mentioned in the *patta* should revert to the Raj On the same date J executed, in favour of her father and brother, a *kabuliyat*, in which the compromise was stated in substantially the same terms. J had one son born some years after the execution of the *patta*. In 1885 J gave a mortgage and lease of one of the *mauzas* to the defendant. In a suit brought in 1893, after the death of J, for a declaration that the plaintiff was not bound by the mortgage and lease and for possession of the *mauza*: *Held* by the Judicial Committee (reversing the decision of the High Court) that J's son being incapable of taking under the *patta*, not having been in existence at the time of its execution, on J's death the whole of the *mauza* reverted to the Raj estate, and the plaintiff was entitled to resume it. The restriction on J's power of alienation showed that the intention was not to give her, as was contended for the defendant, an estate of inheritance in one-half of the *mauza*, as that restriction would have been repugnant to such a gift *Bhoobun Mohini Debia* v *Hurrish Chunder Chowdhry (1878), L. R., 5 I. A., 138*, distinguished. The High Court held that J's son had, under the circumstances of the case, an equity to compel the

LEASE—*concluded.*

CONSTRUCTION—*concluded.*

[illegible]

LEAVE OF COURT.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE [7 C. W. N., 90

LEAVE TO APPEAL.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—

SUBSTANTIAL QUESTIONS OF LAW; [I. L. R., 25 Mad., 215

CONCURRENT JUDGMENTS ON FACTS [5 C. W. N., 455

PRACTICE AND PROCEDURE—LEAVE TO APPEAL.

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.

—— in formâ pauperis—

See LIMITATION ACT, 1877, s. 5 [I. L. R., 30 Calc., 790

LEAVE TO DEFEND SUIT.

—— extension of time to apply for—

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON. [5 C. W. N., 259

LEAVE TO SUE.

See ACT—1863—XX, s. 18 [I. L. R., 24 Mad., 685; „ 26 Mad., 166

See JOINDER OF CAUSES OF ACTION. [7 C. W. N., 353

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 . I. L. R., 24 Mad., 293

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS. [I. L. R., 25 Mad., 399

See RECEIVER . 6 C. W. N., 829

See RIGHT OF SUIT—FRAUD. [7 C. W. N., 353

LEGACY.

See WILL—CONSTRUCTION.

——lapse of—

See SUCCESSION ACT, s. 96. [I. L. R., 24 Mad., 299

LEGACY—*concluded.*

—— suit for—

See LIMITATION ACT, 1877, SCH. II, ART. 123 . . I. L. R., 25 Mad., 361

See PARTIES—PARTIES TO SUITS—LEGACY, SUIT FOR.

LEGAL NECESSITY.

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—

ALIENATION FOR LEGAL NECESSITY;

WHAT CONSTITUTES LEGAL NECESSITY.

LEGAL PRACTITIONERS' ACT (XVIII OF 1879).

See PLEADER.

—— ss. 6 and 8—

—*Act XIV of 1874 (Scheduled Districts Act), ss. 3, 5 and 6—Kumaun Rules, 27th July, 1894, rules 2 and 11—Jurisdiction of the High Court as regards enrolment of vakils in the province of Kumaun and Garhwal.*—For the purposes of the Legal Practitioners' Act, 1879, the Commissioner of Kumaun is the High Court for the Province of Kumaun and Garhwal. A vakil, therefore, whose name is enrolled in the High Court of Judicature for the North-Western Provinces is not, by virtue of such enrolment, entitled to practise in the Courts of Kumaun and Garhwal, nor has the [illegible]

MATTER OF THE PETITION OF PADMA DAT JOSHI (F.B., 1902) . . . I. L. R., 24 All., 348

——ss. 12, 13 (*f*), 14, 36—

See MOOKTEAR . I. L. R., 29 Calc., 890

—— s. 13—

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL. [I. L. R., 26 Mad., 448

—— ss. 13 and 14—

See MOOKTEAR . 7 C. W. N., 281

1.—Professional misconduct—*Legal Practitioners' Act (XVIII of 1879), as amended by Act XI of 1896, ss. 13, 14—Grossly improper conduct—Legal practitioner advising payment of money to witness to speak the truth or to prevent giving false evidence—False statements by legal practitioner in letter to induce speedy remittance for such purpose.*—A legal practitioner, by paying or offering

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*continued.*

—— ss. 13 and 14—*continued.*

...mproper ... duties, ... Practi- ... Gopal ...SEN (1900) ... C. W. N., 45

2. ———————*Legal Practitioners' Act (XVIII of 1879, as amended by Act XI of 1896), ss. 13, cl. (f), 14—Pleader, when he does something as a litigant or member of the public and not as pleader, if to be regarded as guilty of professional misconduct—"Any other reasonable cause," construction of*—An allegation, made by a pleader as a defendant in a suit and not as a pleader, that the plaintiffs had bribed some officer of the record-room to tamper with certain documents produced at the instance of the plaintiff, did not amount to professional misconduct In the words "any other reasonable cause," in s. 13, cl. (*f*), of the Legal Practitioners' Act, the expression "other" means "other" *ejusdem generis*, that is, of the class or description of misconduct which is referred to in the preceding clauses, that is to say, professional misconduct. The Legal Practitioners' Act is aimed ...

3.—Disrespectful language—*Petition, containing disrespectful language, presented by co-plaintiff who was also a pleader in the Court—Act committed by a suitor.*—Two persons filed a ...

against the pleader under the Legal Practitioners Act, 1879 The pleader, while disclaiming any intention to be disrespectful, contended that no offence had been committed under the Legal Practi- ...

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*concluded.*

—— ss. 13 and 14—*concluded.*

L. R., 1 P. C., 283, referred to IN THE MATTER OF A FIRST-GRADE PLEADER (1900) [I. L. R., 24 Mad., 17

—— ss. 13, 14 and 40—

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL. [I. L. R., 24 Mad., 83

—— s. 14—

See ante, ss. 12, 13 (*f*), 14, 36.

See ante, ss 13 AND 14.

See ante, ss. 13, 14 AND 40.

—— s. 27; rules made under—

See PLEADER—REMUNERATION. [7 C. W. N., 300

—— s. 28—

See PLEADER—REMUNERATION. [7 C. W. N., 300

—— s. 36—

See ante, ss. 12, 13 (*f*), 14, 36.

—— s. 36 (as amended by Act XI of 1896)—

1.—Tout—*Inquiry and evidence of general repute must be before the officer empowered to make the list—Delegation of authority.*—The officer empowered to make a list of touts under s 36 of the ...

2.———*Application to have persons declared as touts—Hearing on affidavits—Validity—Operation of order limited to Sessions District.*—Where application is made to a Court to declare persons to be touts, under s. 36 of the Legal ...

—— s. 40—

See ante, ss. 13, 14 AND 40.

LEGAL TENDER.

—— certain coin not—

See STOLEN PROPERTY—DISPOSAL OF, BY THE COURT. I. L. R., 25 Bom., 702

LETTERS PATENT, HIGH COURTS, 1865—*continued.*

—— cl. 12—

See ARBITRATION—PRIVATE ARBITRATION.
[I. L. R., 24 Mad., 31

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
[I. L. R., 30 Calc., 369

See JURISDICTION—CAUSES OF JURISDICTION.

See RIGHT OF SUIT—FRAUD.
[7 C. W. N., 353

1.—*Civil Procedure Code (Act XIV of 1882), ss 16, 16A, 17, 373—Suit instituted by leave and withdrawn with liberty to bring fresh* [illegible]

suit, which was refused, and against that order of refusal plaintiff appealed *Held* that the force of the original order granting leave to institute the suit was exhausted by its institution in pursuance thereof; and that, in consequence, when leave was again applied for, in respect of the institution of the fresh suit, there was nothing to prevent the Court from dealing with the application, and granting or refusing [illegible]

[I. L. R., 24 Mad., 293

2.—*Jurisdiction—"Suits for land or other immorable property"—Cause of action—Suit for title to land situate outside the original jurisdiction of the High Court—Jurisdiction of the High* [illegible] dmin- [illegible] n the [illegible] ed to [illegible] both [illegible] holly situated outside the local limits of the ordinary original civil jurisdiction of the Court, for the construction of his grandfather's will, under which he claimed; for an account by the executrix of the will, for the administration of the testator's estate; and for other reliefs; alleging, *inter alia*, that the principal defendant was residing in Calcutta, and that there was personal property of the testator's within the jurisdiction of this Court at the time of the institution of the suit *Held* that this was a 'suit for land' within the terms of cl 12 of Letters Patent, 1865, and the High Court had no jurisdiction to entertain it The meaning of the words "suits for land or other immoveable property," in cl. 12 of Letters Patent, discussed. *Delhi and London Bank* v *Wordie (1876), I. L. R.,*

LETTERS PATENT, HIGH COURTS, 1865—*continued*

——cl. 12—*concluded.*

1 Calc., 249, 263; Kell v. *Fraser (1877), I. L. R., 2 Calc., 445, 463; Sethagiri Rau* v. *Rama Rau (1896), I. L. R., 19 Mad., 448,* referred to. HARA LALL BANERJEE *v.* NITAMBINI DEBI (1901)
[I. L. R., 29 Calc., 315

—— cl. 13—

See TRANSFER OF CIVIL CASE—LETTERS PATENT, HIGH COURTS, CL. 13

—— cl. 15—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888), s 135.
[6 C. W. N., 480

—— meaning of "judgment"—

See ASSIGNMENT OF CHOSE IN ACTION.
[I. L. R., 24 Mad., 252

See HABEAS CORPUS, WRIT OF.
[I. L. R., 29 Calc., 286

1.—"Judgment"—*Probate action—Receiver—Issue of Probate and discharge of Receiver.*—An order made by a Judge of the High Court, refusing to stay the issue of probate and the discharge of the Receiver appointed in a probate action, is a "judgment," within the meaning of cl. 15 of the Letters Patent, and is appealable *The Justices of the Peace for Calcutta* v. *The Oriental Gas Co. (1872), 8 B L. R., 433, 452,* commented on and followed. *Hurrish Chunder Chowdhry* v. *Kali Sunderi Debi (1881), I. L. R., 6 Calc., 594; on appeal (1882), L. R., 10 I. A., 4,* referred to. *Durga Prasada* v. *Mallikarjuna (1901), I. L. R., 24 Mad., 358,* dissented from. BRIJ COOMAREE *v.* RAMRICK DAS (1901) . . 5 C. W. N., 781

2.————*Order of a single Judge, refusing a stay of execution—Appeal.*—An order, made by a single Judge, refusing a stay of execution, is not a "judgment," within the meaning of cl. 15 of the Letters Patent, and no appeal lies therefrom. *R.* v. *R., I. L. R., 14 Mad., 1888,* commented on. DURGA PRASADA NAYADU *v.* MALLIKARJUNA PRASADA NAYADU (1901)
[I. L. R., 24 Mad., 358

3.————*Order directing Receiver in suit to advance money for defence by guardian ad litem—Appeal.*—An order directing a Receiver in a suit to advance money to a guardian *ad litem*, to enable him to conduct the defence on behalf of a defendant, is not a "judgment," within the meaning of cl 15 of the Letters Patent, and no appeal lies therefrom KUPPUSAMI CHETTI *v.* RATHNAVELU CHETTI (1901) . . I. L. R., 24 Mad., 511

4. ————*Appeal.*—An order dismissing an application by a judgment-creditor of an insol- [illegible]

LETTERS PATENT, HIGH COURTS, 1865—*continued.*

——cl. 15—*concluded.*

appeal lies therefrom. PUNINTHAVELU MUDALIAR v BHASHYAM AYYANGAR (1901)
[I. L. R., 25 Mad., 406

5.——————*Civil Procedure Code, ss 278, 282—Claim petition—Order dismissing claim by* [illegible]

[illegible] and 591 of the Code of Civil Procedure SABHAPATHI CHETTI v NARAYANASAMI CHETTI (1901)
[I. L. R., 25 Mad., 555

6.——————*Order dismissing petition praying Court to receive security for costs—Appeal* —An order, dismissing a petition praying the Court to receive a sum of money as security for the costs of an appeal, is a "judgment," within the meaning of cl 15 of the Letters Patent, and an appeal lies therefrom. VYASACHARY v. KESHAVACHARYA (1901) . . I. L. R., 25 Mad., 654

7.——————*Order refusing leave to appeal* [illegible] *Appeal*—There is no appeal, u[illegible] an order, [illegible] of the [illegible] to appeal *in forma pauperis* by a [illegible] a dis-[illegible]

Sriramulu v. *Ramasami, I. L. R.*, [illegible], *Venkatarama Ayyar* v *Madalai Ammal, I L. R., 23 Mad*, 169, and *Srimantu Raja Durga Naidu* v. *Srimantu Raja Mallikarjuna Naidu, I L R, 24 Mad*, 358, followed APPASAMI PILLAI v SOMASUNDRA MUDALIAR (1902)
[I. L. R., 26 Mad., 437

8.——————*Order on a plaintiff to give security for defendant's costs—Appeal* —An order, passed on the Original Side of the Madras High [illegible]

—— cls. 15 and 36—

—"Judgment"—*Revision petition against decree in small cause suit—Difference of opinion—Appeal—Civil Procedure Code (Act XIV of 1882), s. 575* —The plaintiff in a small cause suit having obtained a decree, the defendant filed a civil revision petition in the High Court. At the hearing by a Bench, one learned Judge expressed the opinion

LETTERS PATENT, HIGH COURTS, 1865—*concluded*

——cls. 15 and 36—*concluded.*

that the case should be remanded for disposal according to law after further evidence had been taken, whilst the other held that the case was not one with which the High Court should interfere. The defendant then preferred an appeal under cl. 15 of the Letters Patent, when a preliminary objection was taken to the hearing of the appeal, on the ground that there had been no "judgment," within the meaning of the clause *Held* that the adjudication by the Bench was a "judgment," within the meaning of cl. 15 of the Letters Patent *Held, also,* that the case was governed by s 575 of the Code of Civil Procedure, and not by cl. 36 of the Letters Patent. NARAYANASAMI REDDI v. OSURU REDDI (1901)
[I. L. R., 25 Mad., 548

—— cl. 28—

See HABEAS CORPUS, WRIT OF
[I. L. R., 29 Calc., 286

—— cl. 29—

See TRANSFER OF CRIMINAL CASE—

LETTERS PATENT, HIGH COURTS, 1865, CL 29;

GROUND FOR TRANSFER.
[I. L. R., 28 Calc., 709

—— cl. 36—

See ante, CLS. 15 AND 36.

—— cl. 39—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.
[I. L. R., 30 Calc., 679

LETTERS PATENT, HIGH COURT, N.-W. PROVINCES.

—— cl. 8—

See PAUPER SUIT—APPEALS.
[I. L. R., 24 All., 172.

LIBEL.

See DEFAMATION.

See LIMITATION ACT, 1877, SCH. II, ARTS. 24 AND 25
[I. L. R., 24 All., 368

—*Privilege—Subordinate Government officer making a report to his superior—Imputations contained in the report—Protection* —The defendant, a [illegible]

LIBEL—*concluded.*

NARASIMHA SHANKAR DESHPANDE *v.* BALWANT LAKSHMAN (1903) . . I. L. R., 27 Bom., 585

LICENSE.

——breach of conditions of—

See BENGAL EXCISE ACT (VII OF 1878), s. 59 . . I. L. R., 29 Calc., 606

—— discretion to refuse—

See *HACKNEY-CARRIAGE ACT (BOM. ACT* VI OF 1863), s. 6
[I. L. R., 27 Bom., 307

——obligation to grant—

See POLICE ACT (XLVIII OF 1860), ss. 11, 12 . I. L. R., 26 Bom., 396

——to keep animals—

See BENGAL MUNICIPAL ACT (III OF 1884), ss 263, 273 . . 5 C. W. N., 331

LIEN.

——for unpaid purchase-money—

See CONTRACT—BREACH OF CONTRACT.
[7 C. W. N., 562

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.
[6 C. W. N., 150

——maritime—

See ADMIRALTY OR VICE-ADMIRALTY JURISDICTION. I. L. R., 29 Calc., 402

——of attorney, for costs—

See ATTORNEY AND CLIENT.
[I. L. R., 29 Calc., 63

——of mortgagee—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.
[I. L. R., 30 Calc., 794

—of banian—*Damages*—On termination of a banianship agreement, a banian's lien is indivisible,

LIEN—*concluded.*

and extends over every portion of the goods come into his possession as security for advances made by

LIFE ESTATE

See CONTRACT—CONSTRUCTION OF CONTRACTS . . L. R., 28 I. A., 198

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED.

See LEASE—CONSTRUCTION.
[I. L. R., 28 Calc., 720

—*Life interest—Perpetual gift—"Always and for ever," meaning of.*—The words "always and for ever," in a Will, award, order of Court or other document, do not *per se* extend the interest given beyond the life of the person who is named. They are not inconsistent with limiting the interest given; but the circumstances under which the instrument is made, or the subsequent conduct of the parties, may show the intention with sufficient certainty to enable the Courts to presume that the grant was perpetual. *Moulvi Muhammad Abdul Majid v. Mussumat*

[6 C. W. N., 668 : s.c., I. L. R., 23 All., 534;
L. R., 28 I. A., 65

LIGHT AND AIR.

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR.

—— enforcement of injunction—

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.
[I. L. R., 26 Bom., 283

LIMITATION.

———

See APPEAL—OMISSION TO APPEAL IN TIME AGAINST PRELIMINARY ORDER OR DECREE . I. L. R., 29 Calc., 758

LIMITATION—*continued.*

See Bengal Municipal Act (Ben. Act III of 1884), ss 270, 271, 353 [6 C. W. N., 167

See Bengal Tenancy Act—

s. 13; . . 6 C. W. N., 190

s 184 and Sch. III; [I. L. R., 28 Calc., 88

Sch. III

See Calcutta Municipal Consolidation Act (Ben. Act II of 1888), ss. 247, 250, 427 . . I. L. R., 30 Calc., 317

See Calcutta Police Act (Ben. Act IV of 1866), s 99 (1) . 7 C. W. N., 883

See Civil Procedure Code, s 560 [5 C. W. N., 816

See Document—Alteration of. [I. L. R., 25 Bom., 616

See Ejectment, Suit for [L. R., 28 I. A., 169

See Execution of Decree—Application for Execution, and Powers of Court. [I. L. R., 25 All., 541

See Hindu Law—Gift—Power to make and accept Gifts. [I. L. R., 27 Bom., 31

See Insolvent Act (11 & 12 Vict, c 21), s. 40 . I. L. R., 26 Bom., 623

See Landlord and Tenant—Nature of Tenancy . I. L. R., 26 Mad., 488

See Limitation Act, 1877.

See Madras City Municipal Act, 1884, ss. 392, 433 and 458 [I. L. R., 25 Mad., 118

See Madras Rent Recovery Act—

s. 69; . I. L. R., 24 Mad., 558

s. 78 . I. L. R., 24 Mad., 339

See Mortgage—Redemption—Right to redeem . I. L. R., 24 Mad., 449

See Registration Act (III of 1877), s. 28 [I. L. R., 29 Calc., 654

See Sale for Arrears of Rent—Incumbrances . I. L. R., 26 Calc., 180

—— question of—

See Res Judicata—Orders in Execution of Decree . I. L. R., 28 Calc., 122

—— under Act XII of 1881, s. 148—

See Parties—Parties to Suits—Rent, Suits for, and Intervenors in such suits . . I. L. R., 25 All., 83

—— under Land Acquisition Act, 1894, s. 18 (2)—

See Land Acquisition Act (I of 1894), ss. 11, 18, 31 and 33. [7 C. W. N., 538

LIMITATION—*continued.*

—— under Madras Act VIII of 1865, s. 78—

See Small Cause Court, Mofussil—Jurisdiction—Wrongful Distraint [I. L. R., 25 Mad., 540

1. LAW OF LIMITATION.

1.—Exemption —*Quære* whether, having regard to the terms of s 50 of the Code of Civil Procedure, a plaintiff can be allowed to take advantage of any ground of exemption from the ordinary law of limitation which has not been pleaded in the plaint Benode Behari Mookerjee v Raj Narain Mitter (1903)

[I. L. R., 30 Calc., 699: s.c., 7 C. W. N., 651

2.—Time—*Civil Procedure Code, s. 54* —When a Court fixes a time under cl. (*a*) or (*b*) of s. 54 of the Code of Civil Procedure, it must be a time within limitation; and s. 54 does not give a Court any power to extend the ordinarily prescribed period of limitation for suits. *Jainti Prasad* v. [illegible]

2. QUESTION OF LIMITATION.

3.—Adverse Possession—*Hindu Law—Widow—Mitakshara Law—Possession of widows in undivided Hindu family—Suit by reversionary heirs to set aside assignment by widows, and for possession—Evidence of arrangement between* [illegible]

[illegible] result of an arrangement with them. As evidence of [illegible]

[illegible] barred by limitation. Sham Koer v. Dah Koer (1902)

[I. L. R., 29 Calc., 664; s.c., 6 C. W. N., 657; L. R., 29 I. A., 132

4.—Alternative plea—*Alternative plea of limitation and tenancy*—It is open to a party to plead tenancy and limitation in the alternative. *Jonardon Mundul* v. *Sambhu Nath Mundul (1889), I. L. R., 16 Calc., 806*, explained. *Dinomonee Debia* v. *Doorga Pershad Mojoomdar (1873), 21 W. R., 70*, relied upon. Where plaintiff and defendant

LIMITATION—*continued.*

2. QUESTION OF LIMITATION—*concluded.*

both claimed under the same landlord, and defendant further took a plea that plaintiff's suit was barred by limitation, the lower Appellate Court found plaintiff's title proved and that defendant's alleged tenancy was not proved, and refused to go into the question of limitation raised by the defendant. *Held* that the question of limitation must be decided. KEAMUDDI *v.* HARA MOHAN MONDUL (1903)
[7 C. W. N., 294

5.—**Execution of decree**—*Instalment decree—Fraud on the part of decree-holder—Objection by minor on attaining majority*—Where a decree is for

was practised, and execution taken against a minor

6.—**Issue**—*Practice.*—Where an issue of limitation is not raised, either by the pleadings or the evidence, it is not obligatory on the Judge to direct it, though he may have a discretion so to do. BOMMADEVERA VENKATA NARASIMHA NAIDU *v.* BOMMADEVERA BHASHYAKARLU NAIDU (1902)
[L. R., 29 I. A., 76: s.c. I. L. R., 25 Mad., 367; 6 C. W. N., 641

7.—**Minority**—*Suit by guardian.*—A suit was brought upon a mortgage bond. The original mortgagee was a guardian acting for a minor, and the suit was also brought by him in the same capacity. The lower Appellate Court held that the suit was

pendra Narain Roy (1895), I. L. R., 23 Calc., 374, relied upon. SHAMA CHURN HUI *v.* KANANGAI CHAITAN PROSAD (1903) . 7 C. W. N., 594

8.—**Report as to date of death**—*Report of*

dates being found not to correspond *Held*, on a question of limitation, that the substantive statement was that given in the vernacular, and that the rest was a miscalculation. JAGATPAL SINGH *v.* JAGESHAR BAKHSH SINGH (1902)
[I. L. R., 25 All., 143: s.c., L. R., 30 I. A., 27; 7 C. W. N., 209.

LIMITATION—*concluded.*

3. STATUTES OF LIMITATION.

MADRAS ACT I OF 1876, s. 7.

9.—*Assessment of Land-revenue Act (Madras Act I of 1876), s. 7—Appeal to Board of Revenue from assessment fixed by Collector—Revenue Recovery Act (Madras Act II of 1864), s. 45—Madras Regulation II of 1803, s. 18—Effect of Madras Act I of 1876 on the procedure prescribed by s. 18 of Regulation II of 1803.*—The period of

after the apportionment proposed by him to the Board of Revenue has been sanctioned. It does not commence to run, under the Act of 1876, from the date when the Collector himself fixes the amount and submits his proposal to the Board of Revenue for sanction.

FISCHER (1902) . . I. L. R., 26 Mad., 389

LIMITATION ACT, 1877.

1.—**Applications.**—Under the Limitation Act, 1877, an application cannot be made merely for the *purpose of signifying the decree-holder's intention* to keep the decree in force. RUNGIAH GOUNDEN AND CO *v.* NANJAPPA ROW (1903)
[I. L. R., 26 Mad., 780

2.—**Cause of action.**—The Limitation Act is intended, not to define or create causes of action, but only to prescribe the period within which existing rights may be enforced. SURJYAMONI DASI *v.* KALI KANTA DAS (1900)
[I. L. R., 28 Calc., 37; s.c., 5 C. W. N., 195

4.—**Title under**—*Limitation—Adverse possession—Landlord and tenant—Alluvial land, suit for—Land diluviated and afterwards reformed—Effect of acquiescence in title of Government—Discontinuance of possession by submer-*

LIMITATION ACT, 1877—*continued.*

sion of land by river —The possession of the tenant is the possession of the landlord, and it can make no difference whether or not the tenant be one who might claim adversely to his landlord. In a suit for alluvial land, at one time part of the plaintiff's permanently-settled estate, but subsequently, in 1854, after diluvion and reformation, adjudged to be an accretion to Government land, where the plaintiffs had taken from the Government ijaras of such land

have held part of the land continuously for more than 12 years, the suit as to that was barred by limitation. The facts that the land had been permanently settled with the plaintiffs by the Government, and that the plaintiffs had always paid to the Government the full amount of revenue assessed upon it, could make no difference. The plaintiffs had acquiesced in the decision of 1854, by which the land was adjudged to the Government, and no ground had been shown for relieving them from the consequences of their acquiescence Another portion of the land, whilst in possession of the Government by the plaintiffs as their *ijaradars*, became submerged, and remained so until within ten years of the institution of the suit, and the Government contended that their possession of the land continued during submersion *Held* that, for the purpose of trying the question of limitation, the Government must be regarded as trespassers and dispossessors of the rightful owners, and it would be contrary to principle and authority to imply the constructive possession of the Government through the plaintiffs as their tenants, whilst the lands were submerged, so as to enable the Government, as wrongdoers, to obtain a title by adverse possession. In order to sustain such a title under the Limitation Act, there must be actual possession of a person claiming as of right by himself or by persons deriving title from him *Held, also*, that the Government were dispossessed by the *vis major* of the submersion, which had the same effect as a voluntary abandonment of the land *Trustees, Executors and Agency Company* v *Short (1888), L R, 13 A. C., 793.* The and, after submersion, became derelict; and, so long as it remained submerged, no title could be made against the true owner *Kally Churn Sahoo* v. *Secretary of State for India (1881), I. L. R., 6 Calc, 725*, overruled. SECRETARY OF STATE FOR INDIA v KRISHNAMONI GUPTA (1902)

[I. L. R., 29 Calc., 518; s.c., 6 C. W. N., 617; L. R., 29 I. A., 104.

—— s. 3 and Sch. II, Art. 118—

—"*Plaintiff*"—*Suit to set aside an adoption—Effect of bar on immediate reversioner* —S died,

pursuance of authority alleged to have been given by her late husband. From that date *A* claimed,

LIMITATION ACT, 1877—*continued.*

——s. 3 and Sch. II, Art. 118—*concluded*

as adopted son, to be entitled to the estate of *S*; and both the daughters of *S* were aware of that claim, from 1886 In 1893 a son was born to one of the daughters, and, within six years of his birth, namely in 1898, the present suit was instituted on his behalf to set aside *A*'s adoption. *A* in defence

——s. 4—

See BENGAL TENANCY ACT, s. 184 AND SCH III . I. L. R., 28 Calc., 86

2.—Pauper suit—*Civil Procedure Code (Act XIV of 1882), ss. 410, 413—Act VIII of 1859, ss. 308, 310—Suit by pauper—Application for permission to sue in formâ pauperis—Limitation—Explanation—Date of institution of suit—Payment of Court-fees* —An application for leave to sue as

limitation, to be a plaint presented on the date on which it was filed. *Skinner* v. *Orde (1879), I. L. R., 2 All, 241*, followed *Abbasi Begam* v. *Nanhi Begam (1896), I L. R., 18 All, 206*, dissented from. JANAKDHARY SUKUL v. JANKI KOER (1900)

[I. L. R., 28 Calc., 427

—— s. 5—

See post, ss 12 AND 5.

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES . L. R., 30 I. A., 20

See DECREE—ALTERATION OR AMENDMENT OF DECREE . I. L. R., 24 Mad., 646

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R., 25 All., 71

LIMITATION ACT, 1877—*continued.*

——s. 5—*continued.*

1.—*Act XII of 1881 (N.-W. Provinces Rent Act), s. 93 (a)—Suit for rent—Limitation.*—S. 5 of the Indian Limitation Act, 1877, applies to a suit under s. 93 (*a*) of the N.-W. Provinces Rent Act, 1881. *Muhammad Husen* v. *Muzaffar Husen (1898), I. L. R., 21 All., 22,* dissented from. BENI PRASAD KUARI *v.* DHARAKA RAI (1901)
[I. L. R., 23 All., 277

2.—

within

case of

who had

dant from his office of *karnam,* endeavoured to

the proper one On its being contended, on second appeal, that the Subordinate Judge ought not to have admitted the appeal to him under s. 5 of the Limitation Act. *Held* (BENSON, *J*, dissenting) that the appeal ought not to have been admitted. *Held, per* CURIAM, that a mere difference in view on the part of the High Court, as to the mode in which the discretion conferred by s 5 of the Limitation Act

material for the purpose of enabling the Judge to

LIMITATION ACT, 1877—*continued.*

——s. 5—*continued*

ex-
not
the
v.

RAMANUJAM PILLAI (1901)
[I. L. R., 25 Mad., 166

3.—*Appeal—Joint appellants—Presentation of appeal beyond time—Affidavit, excusing delay in*

tion suit a decree was passed against twenty-four

the period (thirty days) allowed by the Limitation Act (XV of 1877). The only affidavit excusing the delay was made by defendant 14, who was not in-

plaintiffs to a one-sixth share. The plaintiffs there-

dants 1 to 6, who alone were interested in the *vatans.* They, however, had not excused their delay in presenting the appeal, and it was barred by limitation. VISHWANATH RAMKRISHNA *v.* VASUDEV LAKSHMAN (1901) . I. L. R., 25 Bom., 699

4.—*Limitation—Limitation Act (XV of 1877), ss. 4, 5 12, and Sch. II, Art. 170—"Appeal"—Leave to appeal in formâ pauperis.*—The word

LIMITATION ACT, 1877—*continued.*

——s. 5—*concluded.*

—— ss. 5 and 19—

—*Acknowledgment given beyond time, but in vacation while right of suit still exists, as provided by s 5 of Limitation Act*—The plaintiff brought this suit in 1900 to recover money due under a

——s. 5 and Sch. II, Art 173—

—*Civil Procedure Code (Act XIV of 1882), ss. 623, 629—Review—Second application for*

Act (XV of 1877), and that the time during which the previous application was under disposal could not be deducted. VAMAN SAKHARAM JOSHI v. MALHARI BIN MAHADU (1902) . I. L. R., 28 Bom., 485

——s. 6—

See REGISTRATION ACT (III OF 1877), s. 77. [I. L. R., 30 Calc., 532

——s. 7—

See post, s. 8 . . 6 C. W. N., 348

1.—*Limitation Act (XV of 1877), ss 7, 18 and 28, and Sch. II, Arts 142, 144—Joint family—Separate estate—Possession, discontinuance of—Property, extinguishment of right to* Under s. 7 of the Limitation Act, a person under disability cannot bring his suit after 3 years after the disability

LIMITATION ACT, 1877—*continued.*

—— s. 7—*concluded.*

ceases Under s 28 of the Limitation Act, the right of a person to property is extinguished at the determination of the period limited for bringing a suit for possession of it VASUDEVA PADHI KHADANGA GARU v MAGUNI DEVAN BAKSHI MAHAPATRULU GARU (1901)

[5 C. W. N., 545: s.c., I. L. R., 24 Mad., 387; L. R., 28 I. A., 81

2.—*Minor—Decree-holder—Civil Procedure Code (Act XIV of 1882), s 231.*—When one only of several joint decree-holders is a minor s. 7 of the

3.—*Where limitation is determined by the provisions of the Bengal Tenancy Act, whether a min*

und

Act

the

of

secc

the limitation is determined by the provisions of s. 167 of the Bengal Tenancy Act, s 7 of the Limitation Act cannot have any application, and the minor is not entitled to any fresh period of limitation. *Girija Nath Roy Bahadur v. Patani Bibee (1889), I. L R, 17 Calc, 263*, referred to AKHOY KUMAR SOOR v. BEJOY CHAND MOHATAP (1902)

[I. L. R., 29 Calc, 813

——s. 7, and Sch. II, Art. 11—

—*Minor—Representative—Assignee from minor—Civil Procedure Code (Act XIV of 1882), s 335—Order—Suit to set aside order—Limitation.*—In execution of a decree, one Rudraji purchased the lands in dispute in September, 1887. Rudraji then died, and the lands were delivered, through the Court, into the possession of Rudraji's heirs, in December, 1888 The defendant applied to the Court, under s 335 of the Civil Procedure Code (Act XIV of 1882), with the result that on the 23rd February, 1889, the Court ordered that the lands should be given to him On the 21st April, 1892, Rudraji's heirs, who were still minors at the date of this suit, assigned their rights to the plaintiff. On the 21st January, 1899, plaintiff filed this suit to recover possession of the property. *Held* that the

LIMITATION ACT, 1877—*continued.*

——s. 7, and Sch. II, Art. 11—*concluded.*

to his representatives after his death, but not to an assignee from the minor. *Rudrakant* v. *Nobo Kishore (1883), I. L R., 9 Calc., 663,* and *Harak Chand* v. *Deonath Sahay (1897), I L R., 25 Calc., 409,* followed. MAHADEV RAM MESTA SUTAR *v.* BABI CHIMNAJI SUTAR (1902)

[I. L. R., 26 Bom., 730

——ss. 7 and 8, and Sch. II, Art. 106—

—*Suit by joint claimants, one being a minor—Bar of limitation saved as against all.*—In 1885, five persons commenced to carry on business in partnership. In 1890 *P* (one of them) died. No accounts were taken, nor were the heirs of *P* introduced as partners into the partnership The four surviving partners continued to carry on the business. In 1891, *C* (one of them) died No accounts were taken, nor were the heirs of *C* introduced as partners into the partnership. The three surviving partners continued to carry on the business In 1898, the legal representatives of *C* instituted this suit, against the surviving partners and the representatives of the deceased partners, for an account, and for a share of the [illegible] in 189C [illegible] on the [illegible] at the [illegible] ity at the date of suit On its being contended that the suit was barred by limitation: *Held* that the starting point for computing the period of limitation was the date of *C's* death The present suit could not be regarded (within the meaning of Art 106 of Sch. II to the Limitation Act) as a suit in part for an account and a share of the profits of the original partnership. When a partnership is determined by death, and the surviving partners continue to carry on the business, the Limitation Act is no bar to taking the accounts of the new partnership by [illegible]

[illegible] in 1891 and the suit would be barred, *primâ facie* by Art 106 of Sch. II to the Limitation Act, the bar was saved by ss 7 and 8 of that Act, inasmuch as the third plaintiff was and still continued a minor. The effect of s 8 was to save the bar in the case [illegible] claimants [illegible] could give [illegible] partners o[illegible] representat[illegible] plaintiff. [illegible] of the Limitation Act considered. *Barber Maran* v. *Ramana Goundan, I. L. R., 20 Mad., 461,* discussed. The decision in that case held inapplicable to a case of co-heirs *Seshan* v. *Rajagopala, I L R, 13 Mad., 236*; and *Kandhiya Lal* v. *Chandar, I. L. R., 7 All., 313,* approved as to the construction of s 7 of the Limitation Act. AHINSA BIBI *v.* ABDUL KADER SAHEB (1901)

[I. L. R., 25 Mad., 26

LIMITATION ACT, 1877—*continued.*

——ss. 7 and 8, and Sch. II, Art. 179—

—*Application for execution of decree—Joint decree in favour of three persons—Previous application, more than three years before, while one decree-holder was a minor—Attainment of majority by that decree-holder within three years of present application—Limitation—"Joint execution-creditors"—"Joint creditors"—"Person entitled"—Civil Procedure Code (Act XIV of 1882), s. 231*—On 30th June, 1892, a joint decree was passed in favour of three brothers, who, at the date of the decree, were all minors On 8th January, 1896, the last application for execution, previous to the present one, was made. At this date two of the brothers had attained majority and one was a minor. On 25th February, 1899, the present application for execution was presented, the youngest brother having attained majority less than three years before the application. The application of 8th January, 1896, was decided or assumed to have been made in accordance with law. *Held* that the decree was not capable of execution, either as a joint decree, or to the extent of the interest of the youngest decree-holder. S 7 of the Limitation Act, 1877, only applies where all the joint execution-creditors were under disability at the time when the period of limitation began to run. Joint execution-creditors are not "joint creditors," within the meaning of s. 8 of the Limitation Act, 1877. The words "a person entitled to institute a suit or make an application," in s 7 of the Limitation Act, refer to one who, in his own right, is so entitled, and not to a person who, by a rule of procedure, such as that contained in s 231 of the Code of Civil Procedure, is authorised, with the permission of the Court, to make an application for execution for the benefit of himself and others interested jointly with him in the decree to be executed. *Surja Kumar Dutt* v. *Arun Chunder Roy, I. L. R., 29 Calc., 465,* dissented from. *Seshan* v. *Rajagopala, I. L. R., 13 Mad., 236,* and *Vigneswara* v. *Bapayya, I L. R., 16 Mad., 436,* approved. PERIASAMI *v.* KRISHNA AYYAN (F.B., 1902) . I. L. R., 25 Mad., 431

——s. 8—

See ante, ss. 7 AND 8 AND SCH II, ART. 106.

See ante, ss. 7 AND 8 AND SCH. II, ART. 179.

1.—*Limitation Act (XV of 1877), ss 7, 8—Decree obtained by an adult jointly with minors*—Where a rent decree was obtained by an adult plaintiff and three minors who were described in the plaint as suing through the adult plaintiff as their guardian: *Held* that, the adult plaintiff being entitled to obtain the decretal amount and give a valid discharge, the matter came directly under s 8 of the Limitation Act, and that the plaintiffs were not protected by the provisions of s. 7. BHOLANAND JHA *v.* PADMANUND SINGH (1901) . 6 C. W. N., 348

2.—*Suit for contribution by debtor who has paid money due under a bond against heir of co-obligor of bond—Limitation—Minority—Nature of the*

LIMITATION ACT, 1877—*continued.*

——s. 8—*concluded.*

rights of co-obligees discussed—In the case of co-obligees of a money bond, in the absence of anything [illegible]

——s. 10—

See Trust . I. L. R., 30 Calc., 369

—*Suit by beneficiary against executors*—A suit brought by a beneficiary against the executors of a will, for the purpose of following property vested in them in trust for a specific purpose, and of making them account for it and hand over to such beneficiary, as the result of that account, what may be found due to him, comes within the provisions of s. 10, Limitation Act, and cannot be barred by lapse of time. *Hurro Coomaree* v *Tarini Churn (1882), I L. R., 8 Calc., 766,* followed *Saroda Pershad* v. *Broja Nath (1890), I L. R., 5 Calc, 910,* distinguished. Nunda Lal Bose v. Nistarini Dassee (1902) . 7 C. W. N., 353

——ss. 12 and 5 -

1.—*Appeal—Subsisting right of appeal—Application for copies—Exclusion of time in computing the period of limitation*—So long as the right of appeal is subsisting, an appellant is entitled, under s 12 of the Limitation Act (XV of 1877), to apply for a copy of the lower Court's decree. The time requisite for obtaining such copy should be excluded in computing the period of limitation prescribed for the appeal *Siyadat-un-Nissa* v. *Muhammed (1897), I L. R., 19 All, 342,* and *Sitaram* v *Ramji (1900), P J, p 53,* followed Tukaram Gopal v. Pandurang Sadaram (1901) [I. L. R., 25 Bom., 584

2.—*Appeal—Exclusion of time for obtaining* [illegible]

[illegible] an appeal expires on a day when the Court is closed, the appeal may be presented on the day the Court [illegible]

3.—*Computation of time—Deduction of time for preferring an appeal—Time required to obtain a copy of the decree*—The appellant, with a view to prefer an appeal in the lower Appellate Court, applied for obtaining a copy of the decree on the 15th October; information was supplied to him on the 18th November as to the number of folios required for copying the decree, and on the same day the appellant put in the folios, and the copy was ready for delivery on the 21st November. *Held* that, in preferring an appeal, the appellant was entitled to the deduction of the whole period from the 15th October to the 21st November. Kali Sankar Bajpai v Baikanta Nath Sen (1902) . 7 C. W. N., 109

——s. 14—

See Execution of Decree—Transfer of Decree for Execution.

[5 C. W. N., 150

See Registration Act (III of 1877), s. 77 . . I. L. R., 30 Calc., 532

See Sale in Execution of Decree—Setting aside Sale—General Cases

[I. L. R., 29 Calc., 626

1.—Proceedings to enforce a decree, taken *bonâ fide* before a Court which the party *bonâ fide* [illegible] within [illegible] *Hira* [illegible], 792, [illegible]

[illegible] C. W. N., 150

s.c, I. L. R., 28 Calc., 238

2.—*Act XII of 1881 (North-Western Provinces Rent Act), s 148—Suit by intervenor to establish his title in a Civil Court—Limitation*—D sued C for rent of agricultural land, alleging C to be his occupancy tenant C pleaded that he was not the tenant of D, but was the tenant of B and others B and others were accordingly added as defendants to the suit The suit was [illegible]

barred by limitation. Whatever might have been the case with C, B and others, though perhaps acting in good faith, did not prosecute the former proceedings in the Court of Revenue with due diligence [illegible]

3.—*Deduction of period during which plaintiff had been prosecuting another proceeding—Former proceeding dismissed for misjoinder of causes of action—Written statement of defendant treated as an acknowledgment*—Plaintiff had previously filed

LIMITATION ACT, 1877—*continued.*

—s. 22—*concluded.*

instead of as one of the heirs. *Held* that there was no addition of a new defendant, within the *meaning of s.* 22, Limitation Act. PROSUNNO KUMAR SEN *v.* MAHABHARAT SAHA (1903)
[7 C. W. N., 575

—s. 23—

See post, SCH. II, ART. 35.
[I. L. R., 25 Bom., 644

—ss. 23 and 28, and Sch. II, Arts. 120, 142 and 144—

—Attachment by Magistrate under s. 146, Criminal Procedure Code—Cross-suits for declaration of right to possession—" Continuing wrong "—Limitation.—Certain lands were attached, by a Magistrate, in 1886, under s. 146 of the Code of Criminal Procedure, in consequence of disputes relating to their possession. The Magistrate con-

being raised ... for declaration of title to immovable property and the profits therefrom, they were governed by Art 120 of Sch II to the Limitation Act. Articles 142 and 144 were not applicable, the suits not being for the recovery of immovable property, within the

regarded as having discontinued possession. The attachment by the Magistrate operated, in law, for purposes of limitation, simply as a detention or custody, pending the decision by a Civil Court, on behalf of the party entitled. For the purposes of

and possession, and the procuring by such denial the attachment by the Magistrate. There was no continuing wrong, within the meaning of s. 23 of the Limitation Act, so as to give a fresh starting point for limitation at every moment of the time during which the attachment continued. *Chukkun Lal Roy* v. *Lolit Mohan Roy, I. L. R., 20 Calc.,*

LIMITATION ACT, 1877—*continued.*

—ss. 23 and 28, and Sch. II, Arts. 120, 142 and 144—*concluded.*

... Though the suits ... declaration ... only the ... , and did not extinguish the right and title of the true owner to the property. The operation of s. 28 of the Limitation Act is limited to cases in which the bar of limitation applies to suits for possession of property. The right of the true owner to lands cannot be extinguished, however long such an attachment may continue; nor can lands attached under s. 146 of the Code of Criminal Procedure be ever forfeited to Government. RAJAH OF VENKATAGIRI *v.* ISAKAPALLI SUBBIAH (1902)
[*I. L. R., 26 Mad., 410*

—s. 26—

See RIGHT OF WAY.

—s. 28—

See ante, SS. 23 AND 28 AND SCH. II, ARTS. 120, 142 AND 144.

—meaning of "possession"—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . . 6 C. W. N., 601

—Limitation Act (XV of 1877), ss 7, 18 and 28, and Sch. II, Arts 142, 144—Joint family—Separate estate—Possession, discontinuance of—Property, extinguishment of right to—Under s 7 of the Limitation Act, a person under disability ... after the disability

... L. R., ... I. A., ...

Schedule II.

—Art. 2—

See post, ART. 28 . 7 C. W. N., 728

See BOMBAY MUNICIPAL ACT (BOM. ACT III OF 1888), s 527.
[I. L. R., 25 Bom., 387

—Art. 3—

... *suit for recovery of*

[7 C. W. N., ...

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——**Art. 10**—

—*Act XV of 1877 (Indian Limitation Act), Sch. II, Arts. 10, 120, 144—Suit for pre-emption against heir of mortgagee by conditional sale—"Physical possession," meaning of—Accrual of cause of action in suit for pre-emption of property mortgaged by conditional sale—Expiration*

to the words "physical possession," by which is

——**Art. 11**—

See ante, S. 7, AND SCH. II, ART. 11.
See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY

[I. L. R., 29 Calc., 25

—*Civil Procedure Code (Act XIV of 1882), s. 335—Order under s. 335—Subsequent suit—Partition—Present possession—Limitation.*—The plaintiff purchased certain land at a Court sale in execution of a money decree against defendant No. 1. In attempting to obtain possession he was obstructed by defendant No. 8, who claimed the land under a mortgage with possession from the co-par-

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——**Art. 11**—*concluded.*

[illegible] of defendant No. 1. He then applied to the

partition of the family property of the defendants, prayed that the order of the 12th March, 1898, might be set aside and a partition directed, and that at such partition he might be allotted and put in possession of the land in dispute *Held* that the suit

dure Code, and as it was in form and substance one for establishing the plaintiff's right to and for the present possession of the particular land in question BHIMAPPA *v.* IRAPPA (1901)

[I. L. R., 26 Bom., 146

——**Art. 12**—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 29 Calc., 626

——**Art. 13**—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[5 C. W. N., 649

——**Art. 14**—

See BENGAL TENANCY ACT, S. 107.

[I. L. R., 28 Calc., 676

1.—*Estates Partition Act (Bengal Act VIII of 1876), ss 116, 149 and 150—Suit for possession.*—In a partition proceeding before the Collector, under the Estates Partition Act, *R*, a party to that proceeding, contended that certain land measured as part of the estate under partition was not part of that estate, but appertained to his *howla*. The Revenue authorities inquired into his contention, under s 116 of the Act, and decided it against him. On a suit having been brought by him, after the lapse of one year, for a declaration that the disputed land was part of his *howla*, the defence was that, the suit not having been brought within one year from the date of the order passed by the Revenue authorities, it was barred by limitation. *Held* that the suit was so barred *Laloo Singh v. Purna Chander Banerjee (1896), I. L. R., 24 Calc, 149*, distinguished. PARBATI NATH DUTT *v.* RAJMOHUN DUTT (1901) . . I. L. R., 29 Calc., 367; [s.c., 6 C. W. N., 92

2.—*Execution of decree—Civil Procedure Code, ss 320 et seqq —Sale held by Collector, but afterwards set aside—Suit by auction-purchaser to have sale confirmed—Limitation*—In execution of a decree which had been transferred to the Collector for execution under the provisions of s. 320 of the Code of Civil Procedure, certain immovable property was sold by auction on the 22nd of September

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 14—*concluded.*

1891. But the judgment-debtors applied to the Collector to have the sale set aside, and, on the 30th October, 1891, the Collector set aside the sale and ordered a fresh proclamation of sale to be issued. The order of the Collector setting aside the sale was, [illegible]

the bulk of property. The mortgage-money was paid into Court in discharge of the decree, and satisfaction of the decree was entered up; and, on the 21st of December, 1891, the execution case was struck off. On the 12th of September, 1894, the auction-purchaser, who, after the sale had been set aside, had withdrawn the purchase-money paid in by her, brought a suit to have the sale in her favour confirmed. *Held* that, inasmuch as the plaintiff's claim involved the setting aside of the Collector's order of the 30th of October, 1891, by which the sale to the plaintiff had been set aside, the suit was barred by limitation, having regard to Art. 14 of the second Schedule to Act XV of 1877. *Mal-* [illegible] *Bari Babu, Weekly Notes, 1894, p 78,* held not to be of effect since the ruling of the Privy Council in *Malkarjun* v. *Narhari.* *Moti Lal* v. *Karrabuldin (1897), I. L. R., 25 Calc., 179,* distinguished RAGHUNATH PRASAD *v.* KANIZ RASUL (1902)

[I. L. R., 24 All., 467

——Art. 16—

See FALSE IMPRISONMENT.

[I. L. R., 30 Calc., 872

——Arts. 24 and 25—

—*Arts. 23, 24, 25, 36—Limitation—Suit to recover damages on account of injury caused by a false report made to the police—Suit for damages for malicious prosecution*—The defendant laid information at a police station against the plaintiff, alleging that the plaintiff and several other persons entered the female apartments of the defendant, broke open locks, plundered his goods, and caused hurt to his wife. Thereupon an inquiry was made by the police, with the result that the information was found to be false. The defendant was prosecuted under s. 182 of the Indian Penal Code, convicted, and sentenced to six months' imprisonment. The plaintiff thereafter sued to recover damages from the defendant "as compensation on account of mental distress and defamation." *Held* that this was not a suit for damages on account of malicious prosecution, for no prosecution had been initiated; but it was a suit for compensation for libel or slander, the limitation applicable to which was that prescribed by Art 24 or Art. 25 of the second Schedule to Act XV of 1877. *Austin* v. *Dowling (1870), L. R., 5 C P., 534; Yeats* v *The Queen (1885), L. R., Q. B. D., 649,* and *Queen-Empress* v. *Bisheshar (1893), I. L. R., 16 All., 124,* referred to. ISHRI *v.* MUHAMMAD HADI (1902)

[I. L. R., 24 All., 368

——Art. 28—

—*Bengal Tenancy Act (VIII of 1885), ss. 121 140—Suit for wrongful distraint—Limitation Act (XV of 1877), Sch. II, Arts 2, 28, 29.*—The limitation applicable to a suit for compensation for illegal distraint of crops by the landlord is one year from the date of the wrongful seizure. Art 28 or 29, and not Art. 2, of the 2nd Schedule to the Limitation Act applies to such suits. JAGATJIBAN NANDO ROY *v.* SARAT CHANDRA GHOSH (1902)

[7 C. W. N., 728

——Art. 29—

See ante, ART. 28 . 7 C. W. N., 728

See post, ARTS. 42 AND 29

—*Suit for money wrongly taken out in execution—Bengal Regulation VIII of 1819—Patni taluk.*—A suit to recover the surplus proceeds, of a sale held under Bengal Regulation VIII of 1819, wrongfully taken out by the defendant in execution of a decree against a third party, does not come under Art. 29, Sch. II, of the Limitation Act. *Jagjivan Javherdas* v. *Gulam Jilani Chaudhri (1883), I. L. R., 8 Bom., 17,* dissented from. LAKSHMI PRIYA CHOWDHURANI *v.* RAMA KANTA SHAHA (1902)

[I. L. R., 30 Calc., 440; s.c., 7 C. W. N., 520

——Art. 31—

See BILL OF LADING.

[I. L. R., 26 Bom., 563

——Art. 35—

See RESTITUTION OF CONJUGAL RIGHTS.

[I. L. R., 28 Calc., 37

—*Husband and wife—Parsis—Suit for restitution of conjugal rights—Limitation Act (XV of 1877), s. 23, Sch. II, Art. 35 Parsi Marriage and Divorce Act (XV of 1865).*—A suit under the [illegible]

[I. L. R., 25 Bom., 644

——Art. 36—

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . 5 C. W. N., 273

——Arts. 42 and 29—

—*Suit for compensation for wrongful seizure of movable property under legal process—Suit for compensation for injury caused by an injunction*

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

—Arts. 42 and 29—*concluded.*

wrongfully obtained—The defendant, on the 18th of February, 1893, attached in execution of his decree, certain country soap, as being the property of his judgment debtor. The plaintiff intervened, claiming the soap as his, and his objection was allowed. The defendant thereupon instituted a suit, under s. 283 of the Code of Civil Procedure, for declaration of the

'ed, and

23rd of

of this

an in-

e made

tiff, on

of the defendant's appeal, obtained possession of the soap. He then sued the defendant to recover damages for the loss of part and the deterioration of the rest of

[I. L. R., 24 All., 146

—Art. 47—

1.—Query whether Art 47 applies to an order under s 146 of the Code of Criminal Procedure DEO NARAIN CHOWDHURY *v.* WEBB (1900)

[I. L. R., 28 Calc., 86; s.c., 5 C. W. N., 160

2.—*Mamlatdars' Courts Act (Bom. Act III of 1876), s 13—Possessory suit—Mamlatdar's Court*—In a possessory suit instituted in a *Mam-*

—Arts. 48, 49 and 145—

—*Deposit—Suit to recover property deposited for safe custody.*—In October, 1897, the plaintiff's

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

—Art. 57—

—*Act IX of 1872 (Indian Contract Act), s 176—Pawnor and pawnee—Suit to recover balance of debt after sale of articles pawned—*

the date of the loan. *Madan Mohan Lal v Kanhai Lal (1895), I L R, 17 All, 281*, and *Ram Chandra v. Antaji, Bom, P. J. 1886, p 161*, referred to. ALI KHAN *v.* DEBI PRASAD (1901)

[I. L. R., 24 All., 251

—Arts. 59 and 60—

See post, ART. 145 . 7 C. W. N., 476

—Arts. 60 and 64—

—*Money payable on demand—Deposit as a trustee—Money found due on account stated*—A suit was brought by the plaintiff on the 28th June, 1897, to recover a certain sum of money from the

certain commission in return. There was also a verbal agreement to the effect that sums of money would be sent by the plaintiff to the defendant, who would hold the same in deposit as a trustee; and that on

—Art. 61—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

[I. L. R., 26 Mad., 686

—Arts. 62 and 97—

1.—*Contract—Failure of consideration—Vendor and purchaser—No title in vendor to part of land sold—Failure to give possession to vendee—Suit by vendee for refund of purchase-money—Compensation—Damages*—On the 25th August, 1891, *A* sold certain property, consisting of forty-two separate plots of land, to the plaintiff, by a sale-

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 14—*concluded.*

1891. But the judgment-debtors applied to the Collector to have the sale set aside, and, on the 30th October, 1891, the Collector set aside the sale and ordered a fresh proclamation of sale to be issued. The order of the Collector setting aside the sale was,

the bulk of property. The mortgage-money was paid into Court in discharge of the decree, and satisfaction of the decree was entered up; and, on the 21st of December, 1891, the execution case was struck off. On the 12th of September, 1894, the auction-purchaser, who, after the sale had been set aside, had withdrawn the purchase-money paid in by her, brought a suit to have the sale in her favour confirmed. *Held* that, inasmuch as the plaintiff's claim involved the setting aside of the Collector's order of the 30th of October, 1891, by which the sale to the plaintiff had been set aside, the suit was barred by limitation, having regard to Art 14 of the second Schedule to Act XV of 1877 *Mal-*

(1897), I. L. R, 25 Calc, 179, distinguished. RAGHUNATH PRASAD *v.* KANIZ RASUL (1902)

[I. L. R., 24 All., 467

——Art. 19—

See FALSE IMPRISONMENT.

[I. L. R., 30 Calc., 872

——Arts. 24 and 25—

—Arts 23, 24, 25, 36—Limitation—Suit to recover damages on account of injury caused by a false report made to the police—Suit for damages for malicious prosecution.—The defendant laid information at a police station against the plaintiff, alleging that the plaintiff and several other persons entered the female apartments of the defendant, broke open locks, plundered his goods, and caused hurt to his wife Thereupon an inquiry was made by the police, with the result that the information was found to be false. The defendant was prosecuted under s. 182 of the Indian Penal Code, convicted, and sentenced to six months' imprisonment. The plaintiff thereafter sued to recover damages from the defendant "as compensation on account of mental distress and defamation." *Held* that this was not a suit for damages on account of malicious prosecution, for no prosecution had been initiated; but it was slander, the prescribed by ule to Act X *L. R., 5 C.*

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Arts. 24 and 25—*concluded.*

L. R., Q. B. D., 648, and *Queen-Empress v. Bisheshar (1893), I. L. R., 16 All., 124,* referred to. ISHRI *v.* MUHAMMAD HADI (1902)

[I. L. R., 24 All., 368

——Art. 28—

—Bengal Tenancy Act (VIII of 1885), ss. 121 140—Suit for wrongful distraint—Limitation Act (XV of 1877), Sch. II, Arts. 2, 28, 29.—The limitation applicable to a suit for compensation for illegal distraint of crops by the landlord is one year 28 or 29, Limita- NANDO

N., 728

——Art. 29—

See ante, ART. 28 . 7 C. W. N., 728

See post, ARTS. 42 AND 29.

—Suit for money wrongly taken out in execution

against a third party, does not come under Art. 29, Sch. II, of the Limitation Act *Jagjivan Javherdas v. Gulam Jilani Chaudhri (1883), I. L. R., 8 Bom, 17,* dissented from. LAKSHMI PRIYA CHOWDHURANI *v* RAMA KANTA SHAHA (1902)

[I. L. R., 30 Calc., 440;
s.c., 7 C. W. N., 520

——Art. 31—

See BILL OF LADING.

[I. L. R., 26 Bom., 563

——Art. 35—

See RESTITUTION OF CONJUGAL RIGHTS.

[I. L. R., 28 Calc., 37

—Husband and wife—Parsis—Suit for restitution of conjugal rights—Limitation Act (XV of 1877), s. 23, Sch. II, Art. 35 Parsi Marriage and Divorce Act (XV of 1865).—A suit under the Parsi Marriage and Divorce Act (XV of 1865), by a

[I. L. R., 25 Bom., 644

——Art. 36—

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . 5 C. W. N., 273

——Arts. 42 and 29—

—Suit for compensation for wrongful seizure of movable property under legal process—Suit for compensation for injury caused by an injunction

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Arts. 42 and 29—*concluded.*

wrongfully obtained—The defendant, on the 18th of February, 1898, attached in execution of his decree, certain country soap, as being the property of his judgment-debtor. The plaintiff intervened, claiming the soap as his, and his objection was allowed. The defendant thereupon instituted a suit, under s. 283 of the Code of Civil Procedure, for declaration of the title of his judgment-debtor, but was defeated, and his appeal in that suit was dismissed on the 23rd of March, 1899. At the time of the institution of this suit, the defendant applied for and obtained an injunction directing that the soap should not be made over to the plaintiff. Ultimately the plaintiff, on the 17th of June, 1899, after the dismissal of the defendant's appeal, obtained possession of the soap. He then sued the defendant to recover damages for the loss of part and the deterioration of the rest of the soap while under the defendant's attachment. *Held* that Art. 42, and not Art. 29, of the second Schedule to the Indian Limitation Act, 1877, applied, and that the suit was not barred by limitation. IDU MIAN *v.* RAHMAT-ULLAH (1901)

[I. L. R., 24 All., 146

——Art. 47—

1.—Query whether Art. 47 applies to an order under s. 146 of the Code of Criminal Procedure. DEO NARAIN CHOWDHURY *v.* WEBB (1900)

[I. L. R., 28 Calc., 86; s.c., 5 C. W. N., 160

2.—*Mamlatdars' Courts Act (Bom. Act III of 1876), s. 13—Possessory suit—Mamlatdar's Court*—In a possessory suit instituted in a *Mam-*

PURUSHOTTAM DAYARAM *v.* CHATARGIR GURU ARJUNGIR (1900) . I. L. R., 25 Bom., 82

——Arts. 48, 49 and 145—

—*Deposit—Suit to recover property deposited for safe custody.*—In October, 1897, the plaintiff's mother deposited ornaments, clothes and money with

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 57—

—*Act IX of 1872 (Indian Contract Act), s. 176—Pawnor and pawnee—Suit to recover balance of debt after sale of articles pawned—*

——Arts. 59 and 60—

See post, ART. 145 . 7 C. W. N., 476

——Arts. 60 and 64—

—*Money payable on demand—Deposit as a trustee—Money found due on account stated*—A

certain commission in return. There was also a verbal agreement to the effect that sums of money would be sent by the plaintiff to the defendant, who would hold the same in deposit as a trustee; and that on

Kumari Bibi (1889), I. L. R., 16 Calc., 25, referred to. LAZARUS *v.* KRISHNA CHUNDER DE (1900)

[I. L. R., 28 Calc., 393

——Art. 61—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

[I. L. R., 26 Mad., 686

——Arts. 62 and 97—

1.—*Contract—Failure of consideration—Vendor and purchaser—No title in vendor to part of land sold—Failure to give possession to vendee—Suit by vendee for refund of purchase-money—Compensation—Damages*—On the 25th August, 1891, *A* sold certain property, consisting of forty-two separate plots of land, to the plaintiff, by a sale-

LIMITATION ACT, 1877—*continued.*
Schedule II—*continued.*
—Arts. 62 and 97—*continued.*

deed which contained the usual covenant for quiet enjoyment. The plaintiff obtained possession of thirty-six of the plots, but not of the remainings six The occupants of the latter had been in possession for many years, and claimed to be owners of them. On 6th September, 1897, the plaintiff brought this suit for possession against *A* (his vendor) and the occupant of one of the six plots, and in the alternative he claimed compensation from *A*. Both the lower Courts found that *A's* title to the plot in question had been extinguished at the date of the conveyance to the plaintiff in 1891, and they held that the plaintiff's claim for compensation was barred by limitation under Art. 62 of Sch. II to the Limitation Act (XV of 1877). On second appeal it was contended that the plaintiff's right to compensation arose only when the lower Courts decided that he could not obtain possession of the land, and that consequently his claim fell within [illegible]

[illegible] tiff's vendor) had no title to the land at the date of conveyance, the contract of sale was void *ab initio*: there was then a failure of consideration, and the plaintiff's cause of action for compensation arose on that date ARDESIR *v.* VAJESING (1901)
[I. L. R., 25 Bom., 593

2.—*Assignment of mortgage over immovable property by unregistered document—Receipt by assignor of mortgage amount in fraud of assignee —Suit by assignee against assignor within three years of receipt of mortgage money.*—By an agreement in writing, but not registered, bearing date 21st August, 1895, defendant assigned a mortgage over certain lands to plaintiff, for a consideration which was duly paid. In 1898, the mortgagor brought a suit against plaintiff and defendant to redeem the mortgage and to recover possession of the [illegible]

[illegible] the suit was not barred Defendant, by receiving the [illegible]

[illegible] receipt of the money by defendant. Moreover, as possession of the mortgaged land had been given, under the document of 1895, to plaintiff, and held by him until its redemption by the mortgagor, there was consideration at the time when the assignment was made, and that consideration afterwards failed. Inasmuch as the suit had been brought within three years of the date of the failure of consideration, Art. 97 would apply, and the suit would not be barred. SRIRAMULU *v.* CHINNA VENKATASAMI (1901) . . . I. L. R., 25 Mad., 396

LIMITATION ACT, 1877—*continued.*
Schedule II—*continued.*
—Arts. 62 and 97—*concluded.*

—Art. 64—

See ante, ARTS. 60 AND 64.

1.—*Suit for balance of account—Evidence —Account stated—Acknowledgment.*—A mere [illegible] account, is neither an account stated, to which [illegible]

[illegible] *Thakurya* v. *Sheo Singh Rai, I. L. R., 2 All., 872*, *Zulfikar Husain* v. *Munna Lal, I. L. R., 3 All., 148*; *Sital Prasad* v. *Imam Bakhsh, Weekly Notes, 1883, p. 47*; *Kanhaya Lal* v. *Stowell, I. L. R., 3 All., 581*; *Ghasita* v. *Ranchore, Weekly Notes, 1881, p. 65*; *Kunhaya Lall* v. *Bunsee, Agra F. B., p. 94*; *Hirada* v. *Gadigi, 6 Mad. H. C. Rep., 197*; and *Dukhi Sahu* v. *Mahomed Bikhu, I. L. R., 10 Calc., 284*, referred [illegible]

[illegible] account stated, as there were no reciprocal demands between plaintiff and defendants *Held* that the document was an account stated, within the meaning of Art 64 of Sch. II to the Limitation Act, and that the suit was not barred It is not necessary, in order to bring a case under that Article, that there should be reciprocal demands between the parties *Ganga Prasad* v *Ram Dayal, I. L. R., 23 All., 502*, and *Shankar* v *Mukta, I. L. R., 22 Bom., 513*, commented on MANJUNATHA KAMTI *v.* DEVAMMA (1902) . . . I. L. R., 26 Mad., 186

3.—*Arts. 64, 120—Suit against heirs of deceased debtor—Hindu law—Joint Hindu family.*—The plaintiff, on the 29th of August, 1898, sued to recover a sum alleged to be due on an account stated between himself and one Kashi Nath, since deceased, on the 15th of November, 1893 The contesting defendants were two sons of Kashi Nath, and were sued as members of a joint Hindu family and as partners in the business carried on by Kashi Nath and his third son, who did not defend the suit It was found, however, that these defendants had separated from their father and brother before the date of the account sued upon, and that they were not

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——**Art. 64**—*concluded*

partners in the business *Held* that the suit was governed, as regards limitation, by Art 64 of the second Schedule to the Indian Limitation Act, 1877; that limitation, which had begun to run in favour of the deceased from the date of the account stated, [illegible]

——**Art. 83**—

See post, ARTS 97 AND 83.

——**Art. 89**—

— *Suit for account between principal and agent —Termination of agency—"Movable property" —Money—Evidence as to account stated* —The appellant and respondent, two brothers, were agents the one for the other in dealing with their joint estate, and the agency was found on the evidence to have continued until the 22nd of December, 1885, when the appellant brought a suit against the re- [illegible]

there set out, and inconsistent with the existence of the alleged settlement ASGHAR ALI KHAN *v.* KHURSHED ALI KHAN (1901)

[I. L. R., 24 All., 27; s.c., L. R., 28 I. A., 227

——**Art. 91**—

See ARBITRATION—DUTIES AND POWERS OF ARBITRATORS . 5 C. W. N., 585

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS [L. R., 29 I. A., 203

See DOCUMENT . I. L. R., 30 Calc., 433

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R., 30 Calc., 990

1.—*Suit to cancel a document—Cause of action.* —Where a plaintiff sought for the cancellation of a

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——**Art. 91**—*concluded.*

mortgage-bond and for possession of the mortgaged property, alleging that the mortgage was a sham transaction and that she, the plaintiff, had subsequently remained in possession and had only been dispossessed within three years before suit: *Held* that, if the plaintiff's allegations as to remaining in possession were true, the period of limitation for the suit could not be computed from the date of the [illegible]

[illegible] Bom., [illegible]

2.—*Suit to recover possession—Kobala, setting aside of, if necessary.*—Where it was alleged that defendant was in unlawful possession by virtue of a *kobala* executed by plaintiff's father, and a suit was brought to recover possession of the land: *Held* that the suit was governed by Art. 91 of Sch II to the Limitation Act, inasmuch as plaintiff could not succeed unless he obtained a declaration that the *kobala* was not a valid one CHUNDER NATH BOSE *v* RAM NIDHI PAL (1902)

[6 C. W. N., 863

3.—[illegible] —*Spec*[illegible] *tion* — [illegible] 1877) [illegible] Specifi[illegible] adjudged void and to have it delivered up and cancelled. BAKATRAM NANURAM *v.* KHARSETJI JIVAJISHET (1903) . I. L. R., 27 Bom., 560

——**Art. 97**—

See ante, ARTS 62 AND 97.

1 —*Civil Procedure Code (Act XIV of 1882), s 43—Suit for specific performance—Subsequent suit for money paid on a consideration that failed.* —Defendant having failed to convey certain property belonging to himself and his son to plaintiff as agreed, plaintiff obtained a decree for specific performance, in pursuance of which the price was paid and a conveyance executed. Plaintiff was then obliged to sue for possession, when it was found that the sale did not bind the son's interest, and on grounds of convenience plaintiff was awarded the value of defendant's share instead of a decree for partition. He now sued to recover the balance of the price paid, and it was contended that the suit was, in fact, one for damages for breach of the contract to convey, and as such was barred under s. 43 of the Code of Civil Procedure, inasmuch as the damages claimed could have been sued for in the alternative in the previous suit for specific performance. *Held* that the suit was not barred; it being, in fact, for the recovery of money paid on a consideration that had failed, and the cause of action being different from that in the suit for specific performance. *Held, also,* that the suit was not barred by limitation, inasmuch as the failure of consideration must be taken to have occurred when it was found, in the suit for possession, that

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 97—*concluded.*

the plaintiff was not entitled to recover the son's share; which date was less than three years from that upon which the present suit had been instituted,

ance—Agreement declared unenforceable—Alternative claim for refund of consideration paid thereunder—Limitation—The defendants, against whom a decree for foreclosure was outstanding, agreed to sell certain immovable property to the plaintiff, and the plaintiff paid into Court, as part of the consideration, the amount due by the defendants under the foreclosure decree. The defendants neither executed a conveyance of the property which they had agreed to sell, nor did they return to the plaintiff the money which he had paid on their behalf The plaintiff thereupon sued the defendants, claiming in the alternative either a decree for specific performance of the agreement to sell, or a refund of the money paid by him as part of the consideration for the

was therefore entitled to get back the money which he had paid under the agreement, and (3) that the plaintiff's alternative claim for a refund on failure of consideration was governed as to limitation by Art. 97 of the second Schedule to the Indian Limitation Act, 1877, and was not barred by limitation, inasmuch as limitation only began to run from the date of the High Court's decree declaring the

——Arts. 97 and 83—

—*Vendor and purchaser—Sale of property—No title in vendor to part of property sold—Suit by purchaser for damages - Failure of consideration—Cause of action—Covenant for quiet enjoyment*—On the 22nd November, 1880, the first and second defendants, for themselves and for the third defendant, sold a certain house to the plaintiff's father. The sale deed, which was duly registered, contained the following clause: "We (vendors) are in enjoyment of the house as its owners, and if any one were to obstruct you in the enjoyment of the house we would remove the obstruction so as to put you to no trouble." In the year 1892 the plaintiff brought a suit to recover possession

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Arts. 97 and 83—*concluded.*

the house, of which he was put in possession On the 24th August, 1899, the plaintiff brought the present suit, claiming *inter alia* from defendants 1 and 2 to recover R225 as damages sustained by him by reason of his being deprived of the one-third share of the house. *Held* that the claim for damages was a claim to recover money upon an existing consideration that had failed, and that it fell under Art. 97, Sch. II, of the Limitation Act (XV of 1877), and not Art. 83, and was therefore time-barred, not having been brought within three years from the failure of consideration The clause in the sale-deed was not a contract of indemnity. It was at most a covenant for title and quiet enjoyment. The failure of consideration took place when the plaintiff endeavoured to obtain possession of the property and, being opposed, found himself

——Art. 99—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR
[I. L. R., 26 Mad., 686

——Art. 106—

See ante, ss. 7 AND 8 AND SCH. II ART. 106.

—*Hindu Law—Mitakshara doctrine of joint family property—Partnership*—*V* and his five sons constituted an undivided Hindu family. *V* and his three elder sons lived apart from the two younger sons, and were in possession of some ancestral property. The two younger sons were plaintiff

had been carried on jointly by him and first defendant until 1894, and continued by the first defendant until the institution of the suit. It was alleged that, although there had not been an express agreement of partnership, in the circumstances of the case an agreement under which plaintiff had

——Art. 110—

See post, ARTS. 120 AND 110.
[I. L. R., 25 Bom., 556

See LAND-REVENUE.
[I. L. R., 26 Mad., 730

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 111—

—*Arts. 111 and 116—Suit to recover unpaid purchase-money, and to enforce vendor's lien.*—A suit to recover unpaid purchase-money due in respect of a sale of land, and to enforce the vendor's lien, is governed by Art 111 of Sch II to the Limitation Act *Natesan Chetti* v. *Soundararaja Ayyangar, I. L R., 21 Mad., 141*, followed *Har Lal Muhamdi, I. L R., 21 All., 454*, discussed. AYUTHALA v DAYUMMA (1900) [I. L. R., 24 Mad., 233

——Art. 113—

See ARBITRATION—AWARDS—ENFORCING AWARDS . I. L. R., 23 All., 285

——Art. 116—

1.—*No contract as to payment of purchase-money.*—Where, on a sale of land, there was no con-

[I. L. R., 24 Mad., 233

litigation in which B was suing A on a promissory note, a compromise was arrived at, under which A undertook to execute a mortgage in favour of B,

November, 1891, which he subsequently executed against A, recovering the value of the promissory note upon which he had originally sued He also retained the mortgage which had been executed in the compromise A now sued to recover from B the amount which B had collected under the decree, stating the cause of action as having arisen on the date of that collection, namely, 29th October, 1893, when it was contended that the suit was not maintainable inasmuch as the decree had not been set aside, and that, even if treated as a suit for

suit had not been brought within three years from that date, the plaint having been filed on 14th September, 1896: *Held* that, inasmuch as all necessary allegations were made in the plaint, the contract and its breach being alleged, and as the defendant understood what the claim against him was, the plaint sufficiently disclosed a cause of action for damages for the breach of contract. *Held, also*, that the undertaking in the mortgage was "an

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 116—*concluded.*

[I. L. R., 25 Mad., 50

3.—*Receipt for money, containing terms of sale, signed by vendor and not by purchaser—"Contract in writing registered"*—The mere recital, in a sale-deed, that the consideration has been paid, is not a "contract in writing" to pay the consideration, within the meaning of Art 116 of the second Schedule to the Limitation Act; and, where a sale-deed contains the contract of sale which has preceded the actual sale, Art 116 may apply even though the sale-deed contains an acknowledgment that the consideration has been paid, when in fact it has not been paid *Ayuthala* v *Dayumma, I L R., 24 Mad., 233*, followed *Semble*, that a document executed and given by a vendor of property to his purchaser, and registered, acknowledging payment of a sum of money on account of the purchase price, and providing that the balance should be paid within a certain date, is a "contract in writing registered," within the meaning of Art 116 of the second Schedule of the Limitation Act, though it

4.—*Breach of contract in writing registered—Lease of villages Failure by lessee to put lessor in possession—Executory contract to deliver such possession as the nature of the property admits* —By a registered document, dated 11th November, 1893, defendant leased certain villages to plaintiff for a term of seven years and eight months. On 5th December, 1893, plaintiff applied to be put into possession of the villages, but never obtained possession On 11th November, 1899, plaintiff brought this suit for possession, and in the alternative for the damages which he had sustained by the failure on the part of defendant to put him into possession. On the plea of limitation being set up: *Held* that the claim for damages was not barred, it being governed by Art 116 of Sch. II to the Limitation Act Both in the case of a sale and of a lease, the registered instrument by which such sale or lease is effected not only operates as a grant, but, in the absence of a contract to the contrary, is also construed and operates as an executory contract to deliver to the vendee or lessee such possession of the property as its nature permits; and the breach of such an obligation is a breach of a contract in writing registered, within the meaning of the article referred to ZAMINDAR OF VIZIANAGRAM v BEHARA SURYA-NARAYANA PATRULU (1901) . . . I. L. R., 25 Mad., 587

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

—Art. 118—

See ante, s. 3 AND SCH. II, ART. 118

See post, ARTS. 119, 118 AND 144.

1.—*Adoption — Reversioner — Limitation Act (XV of 1877), Sch. II, Arts. 118 and 141—Suit by a reversioner for possession of immovable property.* —A suit by a Hindu reversioner to recover possession of immovable property after the death of a

[illegible]

become aware more than six years before suit Raiji Khoda, a Hindu, died in 1869, leaving behind him a childless widow In 1884 plaintiffs applied for a certificate of heirship to the deceased's estate, under Bombay Regulation VIII of 1827. The widow opposed the application, alleging that the deceased had adopted a son (defendant No 1) in 1863-64 The

[illegible]

plaintiffs, as reversionary heirs, sued to recover possession of the deceased Raiji's property The defendant pleaded that he was the adopted son of Raiji, and that the suit was barred by limitation Both the lower Courts held that the adoption was not proved, and that the suit was not time-barred. *Held*, on second appeal, that, though the defendant's adoption was not proved, yet, as he had all along asserted his adoption to the knowledge of the plaintiffs since 1884, plaintiff's suit was barred by Art. 118 of Sch II to the Limitation Act (XV of 1877). BAROT NARAN *v.* BAROT JESANG (1900)

[I. L. R., 25 Bom., 26

2.—*Adoption—Declaration that the adoption is invalid—Knowledge—Death of adopter—Date from which limitation runs.*—*B* adopted *N* on the

[illegible]

which the plaintiffs came to know of the adoption, was barred under Art 118 of Sch. II to the Limitation Act (XV of 1877), and that the

[illegible]

—Art. 119—

1.—*Adoption—Suit for possession of immovable property, plaintiff claiming as adopted son, his title as such having been denied by defendant more than six years before suit.*—*Held* that Art. 119 of the second Schedule to the Indian Limitation Act, 1877, did not apply to a suit for possession of immovable property in which the plaintiff claimed as the adopted son of the last male owner of the property, and in which the plaintiff's adoption was

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

—Art. 119—*concluded.*

denied by the defendant, and the plaintiff himself alleged that his right as adopted son had been interfered with more than six years before the institution of his suit *Basdeo* v. *Gopal (1886)*, *I. L. R.*, 8 *All.*, 644; *Ganga Sahai* v. *Lekhraj*

[illegible]

(1895), *I. L. R.*, 21 *Bom.*, 159, and *Harilal Pranlal* v. *Bai Rewa (1895)*, *I. L. R.*, 21 *Bom.*, 376, followed *Inda* v. *Jehanjira*, *Weekly Notes*, 1890, *p.* 241; *Parvati Ammal* v. *Saminatha Gurukal (1896)*, *I. L. R.*, 20 *Mad.*, 40, and *Shrinivas* v. *Hanmant (1899)*, *I. L. R.*, 24 *Bom.*, 260, dissented from. *Jagadamba Chaodhrani* v

[illegible]

LALI *v.* MURLIDHAR (1901)

[I. L. R., 24 All., 195

2.—*Adoption—Invalidity of adoption—Limitation.*—Art. 119 of Sch II to the Limitation Act (XV of 1877) applies to a case where

[illegible]

be rejected merely because it might be barred ... had to rely on the adoption alone. *Shrinivas* v. *Hanmant (1899)*, *I. L. R.*, 24 *Bom.*, 260, referred to. GANGABAI *v.* TARABAI (1902)

[I. L. R., 26 Bom., 720.

—Arts. 119, 118 and 144—

—*Suit by an adopted son more than six years after interference with plaintiff's rights—Claim for declaration as to adoption, and to recover possession of property due to plaintiff as adopted son—Maintainability.*—Plaintiff's rights, as the adopted son of *A*, were interfered with, in connection with certain immovable property, in 1889. In 1897 plaintiff sued for a declaration that he was the adopted son of *A*, and sought to recover the property: *Held* (BHASHYAM AYYANGAR, *J.*, dissenting) that the suit was barred under Art. 119 of Sch. II to the Limitation Act. *Jagadamba Chaodhrani* v. *Dakhina Mohun*, *L. R.*, 13 *I. A.*, 84, followed. *Parvati Ammal* v. *Saminatha Gurukal*, *I. L. R.*, 20 *Mad.*, 40, and *Shrinivasa* v. *Hanmant (1899)*, *I. L. R.*, 24 *Bom.*, 260, approved. *Per* MOORE, *J.*—Where a plaintiff cannot obtain a decree for possession without a decision that an adoption is invalid or never in fact took place, or that an adoption is valid

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——**Arts. 119, 118 and 144**—*concluded.*

the question whether his claim is barred by limitation must be decided with reference to the provisions of Arts. 118 and 119 of Sch. II to the Limitation Act *Per* BHASHYAM AYYANGAR, *J.*—The suit was governed by Art. 144 Art. 119 is applicable only to a suit of the character defined by s 42 of the Specific Relief Act, for a declaration that the plaintiff is entitled to a status or legal character as adopted son In the present case, the plaintiff having been out of, and the defendant having been in, possession since 1889, plaintiff could not maintain a suit for a mere declaration of title, and the only suit he could maintain was the present, which was governed by Art. 144, and was, in consequence, not barred. RATNAMASARI *v.* AKILANDAMMAL (1902)
[I. L. R., 26 Mad., 291

——**Art. 120**—

See ante, SS. 23 AND 28 AND SCH. II, ARTS. 120, 142 AND 144.

See ante, SCH. II, ART. 10.
[I. L. R., 24 All., 17

See BENGAL TENANCY ACT, s 107.
[I. L. R., 28 Calc., 676

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR
[I. L. R., 26 Mad., 686

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS
[L. R., 29 I. A., 203

See EXECUTOR . 7 C. W. N., 476

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . 5 C. W. N., 273

See LAND-REVENUE.
[I. L. R, 26 Mad., 730

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 27 Bom., 515

1.—*Damages*—Under Art 120 of Sch II to the Limitation Act, damages for more than six years previous to the institution of the suit cannot be awarded. JOGESHUR BHAGAT *v* GHANASHAM DASS (1901) . . . . . 5 C. W. N., 356

2.—*Limitation Act (XV of 1877), Sch II, Arts. 120, 127—Mahomedan family—Suit to recover share in joint-family property*—Where, on the death of a Mahomedan, the plaintiff, his daughter, claimed her share by inheritance in properties alleged to be the properties of the joint family of the plaintiff and her brothers, and it was found that she had ceased to be a member of the family since her marriage: *Held* that Art. 120, and not Art 127, of Sch. II to the Limitation Act applied. *Barasha* v *Masummasha (1889), I. L. R, 14 Bom, 70*, dissented from. *Mulfakke* v. *Thimmappa (1891), I L R., 15 Mad, 186; Amme Raham* v. *Zia Ahmed (1890), I. L. R., 13 All., 282; Mahomed Akram Shaha* v *Anarbi Chowdhrani (1895), I L. R, 22 Calc, 954*, and *Kartick Chunder Ghuttuck* v. *Saroda Sundari Debi (1891), I. L. R., 18 Calc, 642*, approved POYRAN BIBI *v.* LAKHU KHAN BEPARI (1901) . 7 C. W. N., 155

3.—*Hindu Law—Joint Hindu family—Liability of sons to pay their father's debts—Limitation.*—The father of a joint Hindu family executed on

Art 120 of the second Schedule to the Indian

4.—*Alienation by widow—Subsequent suit to set it aside—Withdrawal of suit without permission to bring a fresh suit—Confirmation of original alienation—Fresh cause of action to sons of the daughters*—V, who was possessed of lands, died in 1868, leaving a widow and three daughters him surviving In 1874, the widow alienated the land In 1892, the daughters sued to have that alienation set aside, but withdrew the suit, on the ground that the alienation was valid, without

barred MULLAPUDI RATNAM *v.* MULLAPUDI RAMAYYA (1902) . . I. L. R., 25 Mad., 731

5.—*Limitation—Suit against representative of deceased pleader to recover money received by the pleader in his professional capacity on behalf of a client.*—*Held* that a suit to recover from the son of a deceased pleader, as representative of his father, money which had been received by the pleader in his professional capacity on behalf of a client, was

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 120—*concluded.*

[illegible]

——Arts. 120 and 110—

—*Assessment—Land-revenue—Suit for arrears of assessment.*—The term " rent " is used in the Land-revenue Code (Bombay Act V of 1879) only with reference to those superior and inferior holders between whom the relationship of landlord and tenant subsists. Plaintiff was the *inamdar* of a certain village. Defendant held certain lands in the said village, but he was not placed in possession thereof, either by the plaintiff or his predecessor in title, under any agreement. Plaintiff sued to recover from the defendant five years' arrears of assessment. Defendant contended that plaintiff was not entitled to claim arrears for more than three years. *Held* that the suit was governed by Art. 120 and not Art. 110 of the Limitation Act (XV of 1877), the relationship between the parties being that of superior and inferior holder, and not that of landlord and tenant. SADASHIV *v.* RAMKRISHNA (1901) . . . I. L. R., 25 Bom., 556

——Arts. 120 and 125—

—*Hindu law—Suit by presumptive reversionary heirs for decree declaring alienations by Hindu widow not binding except for life interest—Maintainability.*—Assuming that a presumptive reversionary heir may be given a decree declaring that he is entitled to succeed, on the death of a widow, to property alleged to form part of her husband's estate, which property is in the possession of persons who claim it as their own, adversely to the widow, the suit praying for such a declaration must be brought within the period prescribed by Art. 120 of Sch. II to the Limitation Act. Art. 125 does not apply to such a suit. RAMASWAMI NAIK *v.* THAYAMMAL (1902) . I. L. R., 26 Mad., 488

——Arts. 120 and 144—

—*Limitation Act (XV of 1877), Sch. II, Art. 120—Suit by Dharmakarta to recover possession of a temple and of the properties belonging to it—Claim based on prescription, and not on hereditary right—Right to the properties secondary to, and dependent on, the right to the office.*—Plaintiff, who was found to have been in adverse possession of a [illegible]

plaintiff's possession had been adverse for a period less than twelve years, and that, in consequence, his title was not complete under Art. 144 of Sch. II to the Limitation Act: *Held* that the suit for the possession of the office was governed by Art. 120, and that plaintiff, by his adverse possession of more

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Arts. 120 and 144—*concluded.*

than six years, had obtained a title to it by prescription. *Jagan Nath Das* v. *Birbhadra Das, I. L. R., 19 Calc., 776,* followed. *Held, also,* that the suit was not for possession of immovable property, within the meaning of Art. 144, the right to the land being only secondary to, and dependent on, the right to the office. *Tammirazu Ramazogi* v. *Pantina Narsiah, 6 M. H. C. R., 301,* followed. KIDAMBI RAGAVA CHARIAR *v.* TIRUMALAI ASARI NALLUR RAGAVACHARIAR (1902) I. L. R., 26 Mad., 113

——Art. 123—

—*Legacy in satisfaction of indebtedness—Claim for legacy, with ancillary claim for administration of estate.*—By his will dated 27th April, 1887, a testator provided as follows:—" My elder brother [illegible]

administered by the Court; and that the balance of principal and interest might be paid to plaintiff. It was contended in defence that the R10,000 was not a legacy, but either a loan by plaintiff to the deceased or a deposit payable on demand, and that in either case it was barred by limitation. *Held* that the bequest was a legacy [illegible]

share in the testator's estate as family property, and that plaintiff had supported him, and had also claimed a share. *Held* that there was no estoppel, and plaintiff's right to the legacy was not affected by that claim. RAJAMANNAR *v.* VENKATAKRISHNAYYA (1902) . . . . I. L. R., 25 Mad., 361

——Art. 125—

See ante, ARTS. 120 AND 125.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R., 30 Calc., 990

——Art. 127—

See ante, ART. 120 . 7 C. W. N., 155

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

[I. L. R., 24 Mad., 441

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 132—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR [I. L. R., 26 Mad., 686

1.—*Transfer of Property Act (IV of 1882), s. 73—Mortgage—Surplus sale-proceeds at revenue*

having regard to the provision of s 73 to the Transfer of Property Act, a suit like the present, to

2.—*Voluntary payment—Assessment—Payment*

due upon their land since the year 1891. Their land formed part of a larger holding which stood in one name in the revenue records, and the assessment on which the plaintiff paid He now sued the defendants for contribution in respect of the assessment paid for their part of the holding, and contended that their land was charged with the amount so paid by him, and that the period of limitation applying to his claim was

——Art. 134—

1.—"*Purchased*"—*Sub-mortgage by a mortgagee as if complete owner—Possession by sub-mortgagee for over twelve years—Suit for redemption by original mortgagor—Right of sub-mortgagee to*

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 134—*concluded.*

period exceeding twelve years from the date of his mortgage *A* then instituted a suit for redemption; when it was contended on behalf of *C* that *A* was

2.—*Inapplicability to case of involuntary sale.*—Where, in execution of a money-decree, immovable property of a judgment-debtor, in which his real interest is only that of a mortgagee, is

voluntarily. *Muthu* v. *Kambalinga, I. L. R.,* 12

3.—*Alienation of trust property by guru of a matt for valuable consideration—Suit by his successor to recover possession—Trustee, alienation by—Adverse possession—Limitation* —The *guru* or manager of a certain *matt,* who, as trustee, held certain property belonging to the *matt,* sold it for value to the defendant in 1871 In 1898 his successor sued to recover it, contending that the vendor had no power to alienate the trust property. *Held* that the suit was barred by limitation, under Art 134 of Sch. II to the Limitation Act (XV of 1877). DATTAGIRI GURU SHANKARGIRI GOSAVI *v.* DATTATRAYA KRISHNA SINDE (1902) [I. L. R., 27 Bom., 363

4.—*Trust property—Wakf—Land held on condition of service—Alienation* —Where trust property is alienated by the trustees, and the alienees have been in possession by purchase for more than twelve years, the suit, as one for the purpose of

——Arts. 134 and 144—

—*Temple property—Manager—Trustee—Lease by manager—Suit by subsequent manager to recover*

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 120—*concluded.*

governed, as regards limitation, by Art. 120 of the second Schedule to the Indian Limitation Act, 1877. BINDRABAN BEHARI *v.* JAMUNA KUNWAR (1902) [I. L. R., 25 All., 55

——Arts. 120 and 110—

—*Assessment—Land-revenue—Suit for arrears of assessment.*—The term " rent " is used in the Land-revenue Code (Bombay Act V of 1879) only with reference to those superior and inferior holders between whom the relationship of landlord and tenant subsists. Plaintiff was the *inamdar* of a certain village. Defendant held certain lands in

assessment Defendant contended that plaintiff was not entitled to claim arrears for more than three Art. 120 of 1877), ; that of of land-lord and tenant. SADASHIV *v.* RAMKRISHNA (1901) . . . I. L. R., 25 Bom., 556

——Arts. 120 and 125—

—*Hindu law—Suit by presumptive reversionary heirs for decree declaring alienations by Hindu widow not binding except for life interest—Maintainability*—Assuming that a presumptive reversionary heir may be given a decree declaring that he is entitled to succeed, on the death of a widow, to property alleged to form part of her husband's estate, which property is in the possession

——Arts. 120 and 144—

—*Limitation Act (XV of 1877), Sch. II, Art. 120—Suit by Dharmakarta to recover possession of a temple and of the properties belonging to it—Claim based on prescription, and not on hereditary right—Right to the properties secondary to, and dependent on, the right to the office.*—Plaintiff, who was found to have been in adverse possession of a temple and its properties for at least six years (after which he was dispossessed by certain magisterial proceedings), sued to recover possession, as *Dharma-*

and that plaintiff, by his adverse possession of more

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Arts. 120 and 144—*concluded.*

than six years, had obtained a title to it by prescription

19 Cal

was not

the m

being only secondary to, and dependent on, the right to the office. *Tammirazu Ramazogi* v. *Pantina Narsiah, 6 M. H. C. R., 301,* followed. KIDAMBI RAGAVA CHARIAR *v.* TIRUMALAI ASARI NALLUR RAGAVACHARIAR (1902) I. L. R., 26 Mad., 113

——Art. 123—

—*Legacy in satisfaction of indebtedness*—

administered by the Court; and that the balance of principal and interest might be paid to plaintiff.

is a legacy. sued for a property, and had also claimed a share *Held* that there was no estoppel, and plaintiff's right to the legacy was not affected by that claim. RAJAMANNAR *v* VENKATAKRISHNAYYA (1902) . . . . I. L. R., 25 Mad., 361

——Art. 125—

See ante, ARTS. 120 AND 125.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R., 30 Calc., 990

——Art. 127—

See ante, ART. 120 . 7 C. W. N., 155

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION. [I. L. R., 24 Mad., 441

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 132—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR

[I. L. R., 26 Mad., 686

1.—*Transfer of Property Act (IV of 1882), s. 73—Mortgage—Surplus sale-proceeds at revenue*

creditors for the moneys which they had taken out from the Collectorate, with interest *Held*, that, having regard to the provision of s 73 to the Transfer of Property Act, a suit like the present, to

2.—*Voluntary payment—Assessment—Payment*

stood in one name in the revenue records, and the assessment on which the plaintiff paid He now sued the defendants for contribution in respect of the assessment paid for their part of the holding, and contended that their land was

——Art. 134—

1.—*" Purchased "—Sub-mortgage by a mortgagee as if complete owner—Possession by sub mortgagee for over twelve years—Suit for redemption by original mortgagor—Right of sub-mortgagee to be redeemed.*—In 1861, *A* mortgaged certain lands to *B* for R750 In 1881, *B* mortgaged the same lands to *C* for R5,000 In so doing, *B* represented himself as the absolute owner of the property, and did not profess to transfer merely the interest which he possessed, and which was, in fact, only that of a mortgagee. *C* enjoyed possession of the lands for a

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 134—*concluded.*

period exceeding twelve years from the date of his mortgage *A* then instituted a suit for redemption; when it was contended on behalf of *C* that *A* was

2.—*Inapplicability to case of involuntary sale*—Where, in execution of a money-decree,

3.—*Alienation of trust property by guru of a matt for valuable consideration—Suit by his successor to recover possession—Trustee, alienation by—Adverse possession—Limitation*—The *guru*

[I. L. R., 27 Bom., 363

4.—*Trust property—Wakf—Land held on condition of service—Alienation*—Where trust property is alienated by the trustees, and the alienees have been in possession by purchase for more than twelve years, the suit, as one for the purpose of

——Arts. 134 and 144—

—*Temple property—Manager—Trustee—Lease by manager—Suit by subsequent manager to recover*

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Arts. 134 and 144—*concluded.*

the property—Adverse possession.—In 1845, one

withdrawn. In 1886 the then manager brought a similar suit against the defendants, with a similar result. In April, 1900, the present plaintiff, as manager of the temple, filed this suit to eject the defendants, alleging that they were yearly tenants and that he had given them notice to quit. He contended that his predecessor, Krishna Swami, had no power to alienate the property of the temple. *Held* that the suit was barred by limitation. If the original lessor was not a trustee for the temple of the land in question, then the defendants had held by adverse possession, and the suit was barred under Art 144 of Sch II to the Limitation Act (XV of 1877). If the original lessor was a trustee, he had, as such, alienated the land for valuable consideration, and the suit was barred by Art 134 of Sch. II to the Limitation Act. The fact that there was a lease to the defendants, and not an absolute alienation, made no difference A *mulgeni* lease is a purchase *pro tanto* of the interest thereby assured. NARAYAN MANJAYA *v* RAMCHANDRA DEVASTHAN (1903)

[I. L. R., 27 Bom., 373

——Art. 136—

—Title of vendor not extinct at the time the vendee's suit is brought—Act IV of 1882 (Transfer of Property), s. 41—Transfer by ostensible owners—Inquiry by transferee as to title of transferors—Reasonable care—In Art 136 of the second Schedule to the Indian Limitation Act, 1877, the words in the third column relate to the

possession at the date of the vendee's suit, such a suit would be too late. In a suit such as is contemplated by Art 136, when the purchaser succeeds in

employed, caused that property to be recorded in the revenue papers in the names of his young sons The sons sold portions of the property, and mortgaged others The vendee and mortgagee satisfied himself that the property had been recorded for some years in the names of the sons, but there stopped, and made no further inquiries as to whether the property really belonged to the sons, who were the ostensible owners, or not. *Held* that the transferee, though acting in good faith, had not taken reasonable care to ascertain that the transferor had power to make the transfer. PARTAP CHAND *v.* SAIYIDA BIBI (1901)

[I. L. R., 23 All., 442

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 136—*concluded.*

——Arts. 136 to 138 and 144—

—Symbolical possession—Auction-purchaser—Suit for possession from judgment-debtor.—Where an auction-purchaser at a Court sale has obtained symbolical possession, he or his assigns may sue the judgment-debtor for actual possession, within twelve years from the date of obtaining such symbolical possession Art. 144 of Sch. II to the Limitation Act (XV of 1877) applies Arts. 136, 137 and 138 of Sch II to the Limitation Act (XV of 1877) refer to cases where no possession, formal or actual, has been obtained through the Court. Art. 136 applies to a private purchaser from a person not in possession. Art. 137 applies to an auction-purchaser of the rights of a person not in possession. Art. 138 applies when the actual purchase is made of the rights of a judgment-debtor, who is in possession at the date of the sale When an auction purchaser or his assign has obtained formal possession, but is disturbed by the judgment-debtor or his heirs, who have continued in actual possession, Art. 144 applies GOPAL *v.* KRISHNARAO (1900)

[I. L. R., 25 Bom., 275

——Art. 139—

See post, ART. 144—ADVERSE POSSESSION.
[I. L. R., 26 Bom., 442

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 27 Bom., 515

See TITLE—MISCELLANEOUS CASES.
[I. L. R., 25 Mad., 507

1.—*Landlord and tenant—Denial by tenant of landlord's title—Option on part of landlord to determine tenancy—Period of limitation as from determination of tenancy by landlord.*—The defendants in a suit for ejectment occupied land of which their predecessor in title had acquired possession under a deed which had been executed in 1836, and which created a tenancy from year to year in favour of that predecessor in title. That lease had been executed by the leading *mirasidars* of the village

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 139—*concluded.*

the option of the landlord; but, until the landlord indicates that he intends to exercise his option, the tenancy subsists. This principle applies to tenancies from year to year SRINIVASA AYYAR *v* MUTHUSAMI PILLAI (1900)

[I. L. R., 24 Mad., 246

2.—*Malabar Law—Kuikanom lease for indefinite period—Customary law as to duration of lease*—By the customary law of Malabar, a tenant under a *kanom* or *kuikanom* lease is entitled not to be redeemed or ejected until the expiration of twelve years But where no time is fixed for the duration of the lease it does not, under the customary law, determine on the expiration of twelve years from its date. A *kuikanom* lease was granted in 1873, no time being fixed for its determination In 1899, a suit was brought to recover the land, on payment of the value of improvements, when the defence of limitation was set up. It was contended that the *kuikanom* lease determined, by the customary law of Malabar, [illegible]

suit was not barred. KELAPPAN *v* MADHAVI (1901)

[I. L. R., 25 Mad., 452

——Art. 141—

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R., 30 Calc., 990

1.—*Hindu law—Adverse possession—Suit by reversioner to estate held by a Hindu female.*—Under Art. 141 of the second Schedule to the Indian Limitation Act, 1877, a suit can be brought by a reversioner for possession of immovable property, to the possession of which a female heir had been entitled, within 12 years from the date of the death of the female heir, although she may have been out of possession for more than twelve years *Runchordas Vandravandas* v *Parvatibai (1899), I. L. R, 23 Bom, 725,* followed *Lachhan Kunwar* v *Manorath Ram (1894), I L R, 22 Calc., 445,* distinguished. *Ram Kali* v *Kedar Nath (1892), I. L R, 14 All, 156, Hanuman* [illegible]

[illegible]

2.—*Suit by a Hindu entitled to possession of immovable property on the death of a Hindu female.*—One Hazari Lal died in 1856, possessed of certain immovable property, and leaving a son, Jawahir Lal, and a widow, Chunni, surviving him. Jawahir Lal died in 1861, leaving a widow, Tarsa, and a daughter, Jhamman Kunwar After Jawahir Lal's death the widows, Chunni and Tarsa, divided the property between them, and Chunni's share, after passing through the hands of Chandan, the daughter of Hazari Lal, came into the possession of

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 141—*concluded.*

[illegible]

das Vandravandas v. *Parbatibai (1899), I. L. R., 23 Bom., 725, Ram Kali* v. *Kedar Nath* [illegible]

[illegible]

Shama Charan (1897), I. L. R, 20 All., 42, referred to JHAMMAN KUNWAR *v.* TILOKI (1903)

[I. L. R., 25 All., 435

——Art. 142—

See ante, ss. 23 AND 28 AND SCH. II, ARTS 120, 142 AND 144.

See DOCUMENT.

[I. L. R., 30 Calc., 433

——Art. 144—

	Col.
1. IMMOVABLE PROPERTY . .	642
2 ADVERSE POSSESSION . .	643

See ante, ss 23 AND 28 AND SCH II, ARTS. 120, 142 AND 144

See ante, Sch. II—

ART 10; . I. L. R., 24 All., 17

ARTS 110, 118 AND 144;

ARTS 120 AND 144;

ARTS 134 AND 144;

ARTS 136 TO 138 AND 144.

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 27 Bom., 515

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION

[I. L. R., 25 Bom., 362

1. IMMOVABLE PROPERTY.

1.—*Hindu Law—Widow's estate—Alienation by widow—Subsequent adoption—Right of adopted son to claim property alienated—Limitation*—Where a Hindu widow alienates part of the immovable property belonging to her husband's estate, and then adopts a son, the son cannot sue to

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

—Art. 144—*continued.*

1. IMMOVABLE PROPERTY—*concluded.*

point for the period of limitation is the date of the adoption. SREERAMULU *v.* KRISTAMMA (1902)
[I. L. R., 26 Mad., 143

2. ADVERSE POSSESSION.

2.—*Symbolical possession—Effect of symbolical possession as between*

other, symbolical possession is as good as actual possession to give the (judgment-creditor's) purchaser

3.—*Mortgage—Redemption—Adverse possession as against mortgagor—Possession obtained under an agreement with mortgagee—Notice to mortgagor of such possession.*—The plaintiff filed this suit, to redeem a mortgage, with possession of certain land, dated 18th October, 1866 The plaintiffs were the daughters and grandson of the mortgagor Khutubsha (the widow of one Kondi Aga). The first defendant was the grandson and heir of the mortgagee (Nageshrao) The second and third defendants were nephews of Kondi Aga. They denied that the plaintiff, being a female, had any right to the property, and they alleged that they themselves had been in possession since 1885 under an agreement with Nageshrao

and they cont
therefore now
that in 1885
the heirs of
mortgagor, and had entered upon the land The mortgagee thereupon filed a suit against them under s 39 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), which, however, was settled by an

the suit was barred by limitation under

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

—Art. 144—*continued.*

2. ADVERSE POSSESSION—*continued.*

Art. 144 of Sch II to the Limitation Act (XV of 1877), inasmuch as defendants 2 and 3 had been in adverse possession for more than twelve years On appeal to the High Court: *Held* (reversing the decree of the lower Court, and remanding the case) that the suit was not barred. The possession of the defendants was not adverse to the plaintiffs, inasmuch as there was no notice or knowledge, or circumstance that could have given notice or know-

4.—*Suit to recover land—Claim that defendants were holding over as yearly tenants on expiration of lease—Previous suit on another lease—Claim by tenants as permanent lessees—Dismissal of suit, except as to rent—Payment of rent since—Limita-*

the present defendants Nos. 4 to 7 that he was a permanent tenant at a fixed rent. That suit was

trespassers claiming a permanent right of tenancy. The payment of rent under the decree in the suit of 1881, and subsequently at the same rate, could be construed only, so far as the defendants were concerned, as payment by them of the rent admitted by them to be due as permanent tenants, and not as a

been determined, and such adverse possession had continued down to the date of the present suit, namely,

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 144—*concluded*

2. ADVERSE POSSESSION—*concluded.*

5.—*Arts 144 and 139—Landlord and tenant—Ejectment—Plea by tenant of adverse possession.*—The plaintiff sued to recover certain land, alleging that the defendant was in occupation as his tenant The defendant pleaded adverse possession, and contended that the suit was barred by limitation The plaintiff proved that up to 1879 the defendant admitted the plaintiff's ownership of the land. The two lower Courts found that the land was the plaintiff's, but held that the suit was barred *Held* (reversing the decree) that, the defendant having admitted the plaintiff's ownership up to 1879, it lay upon him to show when the alleged adverse possession under Art. 144 commenced, or under Art 139, when the tenancy terminated. As the land was shown to

entitled to remove the superstructure of houses which he had erected on the land TALSHIBHAI NARANBHAI *v.* RANCHHOD GOBAR (1902)

[I. L. R., 26 Bom., 442

——Art. 145—

See ante, ARTS. 48, 49 AND 145

—*Deposit or loan of Government securities—Limitation Act, Sch. II, Arts 59, 60*—Art 145,

ADMINISTRATOR-GENERAL OF BENGAL (1903)

[7 C. W. N., 476

——Art. 146A—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE

[I. L. R., 25 Mad., 635

——Art. 147—

1.—*Transfer of Property Act (IV of 1882), s 58 (e)—"English mortgage"—Covenant for reconveyance not limited to time stipulated for*

bound himself to repay same A deed of mortgage recited that the mortgagors "hereby mortgage and assign to the mortgagee" the mortgaged property. *Semble* that (though it was doubtful if such an assignment was really an absolute one) the assignment was sufficient to fulfil the second requisite of an

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 147—*concluded.*

whether the prayer in the plaint is for foreclosure alone, or is coupled with a prayer in the alternative for sale in lieu of a decree for foreclosure *Ramachandra Rayaguru* v. *Modhu Padhi, I L. R., 21 Mad , 326,* and *Girwar Singh* v. *Thakur Narain Singh, I. L. R , 14 Calc , 730,* dissented from. NARAYANA AYYAR *v.* VENKATARAMANA AYYAR (F B , 1902) . . . . I. L. R., 25 Mad., 220

2.—*Mortgage by decree-holder out of possession—Decree for possession barred by limitation—Title of mortgagee—Adverse possession* —*M*, holding

but without impleading *L K* and *M K*, who were in possession adversely to *M*, and got a decree for sale. *M* meanwhile allowed his decree for possession to become barred by limitation *L K* and *M K* mort-

——Art. 148—

—*Mortgage—Co-mortgagors—Redemption of entire mortgage by one co-mortgagor, who obtains possession of whole property—Subsequent suit against him by other co-mortgagors for their share of the property—Plea of adverse possession—Co-mortgagor who pays off entire mortgage has a charge on the property.*—In 1872, Vinayak and Ganesh, co-owners of the land in question, mortgaged it for R300. In 18•2, in a suit brought by the mortgagee, a consent decree was passed, ordering redemption on payment by the mortgagors of R400.

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 148—*concluded.*

Vinayak paid off the whole amount, redeemed the mortgage, and obtained possession of the land, which he and his heirs continued to hold down to 1898. In 1898, the heirs of Ganesh brought this suit against the heirs of Vinayak, claiming to recover a moiety of the land. The defendants pleaded adverse possession for more than twelve years. The plaintiffs contended that Vinayak, having redeemed the mortgage, stood in the shoes of the mortgagee as regards his co-mortgagor Ganesh, and his heirs, and that the latter had sixty years within which to redeem, under Art. 148 of Sch. II to the Limitation Act (XV of 1877). *Held* that Art. 148 did not apply, and that the plaintiff's claim was barred by limitation. Art. 148 applies to a suit against a mortgagee. A comortgagor who has redeemed the whole mortgage is not a mortgagee. His transaction does not amount to a mortgage. He has merely a charge on the property. VASUDEV BHIKAJI *v.* BALAJI KRISHNA (1902) . . . . I. L. R., 26 Bom., 500

——Art. 158—

See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE . I. L. R., 29 Calc., 86

—*Arbitration—Award, application to set aside—Time from when limitation begins to run—Civil Procedure Code (Act XIV of 1882), s. 516.*—An application to set aside an award must be made within ten days from the time the award arrives at the Registrar's office for the purpose of being filed, and not from the time when it is filed. NOBIN KALLY DABEE *v.* AMBICA CHURN BANERJEE (1901) [5 C. W. N., 813

——Art. 159—

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON . 5 C. W. N., 259

——Art. 165—

—*Execution of decree—Application by judgment-debtor, dispossessed of immovable property, disputing the right of the decree-holder to be put into possession.* *Held* that Art. 165 of the second Schedule to the Indian Limitation Act, 1877, is wide enough to include the case of a judgment-debtor who has been dispossessed of immovable property, and who disputes the right of the decree-holder to be put into possession. *Assam v. Pattamma (1899), I. L. R., 22 Mad., 494,* referred to. HAR DEI SINGH *v.* LACHMAN SINGH (1900) I. L. R., 25 All., 343

——Art. 173—

See ante, s. 5 AND SCH. II, ART. 173.

——Art. 173A—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS. [I. L. R., 24 Mad., 419

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 175A—

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS. [I. L. R., 27 Bom., 182

——Art. 178—

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—EXECUTION OF DECREE. [I. L. R., 30 Calc., 407

See PRACTICE—CIVIL CASES—PARTIES. [I. L. R., 30 Calc., 609

See SALE IN EXECUTION OF DECREE—INVALID SALES —FRAUD. [5 C. W. N., 285

——Arts. 178 and 179—

1.—*Ex parte decree—Application for refund of the amount of decree subsequently set aside—Time for making such application.*—An application for refund of the amount levied in execution of an *ex parte* decree subsequently set aside is governed by Art. 178, Sch. II, of the Limitation Act, and should be made within three years from the date of setting aside of that decree. *Karuppan Zemindar v. Sadasiva (1886), I. L. R., 1 Mad., 66,* followed. HARISH CHANDRA SHAHA *v.* CHANDRA MOHAN DASS (1900) . . I. L. R., 28 Calc., 115

2.—*Execution of decree—Limitation—Decree for pre-emption—Time from which limitation begins to run against the decree-holder.*—Art. 179 of the second Schedule to the Indian Limitation Act, 1877, applies only where there is a decree or order which can at its date be executed. In the case of a decree for pre-emption, there is no decree capable of execution until the decree-holder pays into Court the pre-emptive price. The first application, therefore, for execution of such a decree will be governed, not by Art. 179, but by Art. 178, and limitation commences to run against the decree-holder from the time when the pre-emptive price is paid. *Muhammad Suleman Khan v. Muhammad Yar Khan (1894), I. L. R., 17 All., 39,* referred to. CHHEDI *v.* LALU (1902) . . . . I. L. R., 24 All., 300

3.—*Act IV of 1882 (Transfer of Property Act), ss 86 and 87—Application for order absolute under s. 87—Execution of decree—Limitation.*— [illegible] absolute under s. 87 [illegible] appli- [illegible] of the [illegible] . 178 [illegible] Act, [illegible] run [illegible] for payment of the mortgage money. [illegible] v. [illegible] All 61; [illegible] L. R., [illegible] 898) [illegible] 23 [illegible]

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——**Arts. 178 and 179**—*continued.*

4.—*Decree for sale of hypothecated property on a certain date in default of payment—Order for*

execution of the decree or to take some step in aid of execution of the decree had been made Art. 179 is not exhaustive of applications for execution of decrees. There are cases to which Art. 178 may apply. A decree which directs the sale of mortgaged property in default of payment of the mortgage money declared due on or before the date fixed in the decree is not, within the meaning of paragraph 6, column 3, of Art 179, a decree ... made at ... personal ... pplication ... will run ... raph 1, if ... from the date thereof, or from a future date, under paragraph 6, if payment can be enforced under the decree only on or after such future date fixed in the decree. Neither paragraph 1 nor paragraph 6 can apply to

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——**Arts. 178 and 179**—*concluded.*

237; Thakur Das v. *Shadi Lal, I. L. R., 8 All., 56; Ali Ahmad* v. *Naziran Bibi, I. L. R., 24 All., 542;* and *Ashrafuddin Ahmed* v. *Bepin Behari Mullick, I. L. R., 30 Calc., 407,* approved and followed. All applications for the execution of a decree for sale of mortgaged property are not governed by Art. 178 Observations as to when Art. 179 will be applicable The true criterion in determining whether Art. 179 or Art. 178 applies to a particular application is to ascertain whether any one of the six points of time specified in col. 3 of Art 179 is applicable to it, and if none of them is applicable, it is only then that Art. 178 will apply Under the Limitation Act of 1877, an application cannot be made merely for the purpose of signifying the decree-holder's intention to keep the decree in force. RUNGIAH GOUNDEN AND CO. *v.* NANJAPPA ROW (1903)

[I. L. R., 26 Mad., 780

——**Art. 179**—

See ante, ARTS. 178 AND 179.

See BENGAL TENANCY ACT, SCH. II, ART. 6 . . . **5 C. W. N., 763**

See INJUNCTION—DISOBEDIENCE OF ORDER FOR INJUNCTION **I. L. R., 23 All., 465**

——**joint decrees—joint decree-holders**—

See ante, ss 7 AND 8 AND SCH. II, ART. 179.

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 179—*continued.*

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION.

1.—*Bengal Tenancy Act (VIII of 1885), Sch. III, Art. 6—Whether an application for execution of a decree for a sum not exceeding ₹500, obtained by a co-sharer landlord for his share of the rent, is governed by the special*

2.—*Mortgage—Execution of decree, application for—Pleading limitation in appeal.*—In an application for execution of a mortgage decree by a prior mortgagee, a subsequent mortgagee as a judgment-

[I. L. R., 30 Calc., 761

2. PERIOD FROM WHICH LIMITATION RUNS.

(a) CONTINUOUS PROCEEDINGS.

3.—*Application for execution—Non-payment of process fees—Pendency of appeal—Stay of execution.*—The present application for execution of decree was made on the 16th June, 1897. The previous application had been made on the 24th January, 1893. On the 29th May following, the

to the High Court, and, on the 4th July, the Court ordered that the records be sent up to the High Court, and that the proceedings be adjourned *sine die.*

proceedings. DHUKIRAM SRIMANI *v.* JOGENDRA CHUNDER SEN (1900) . . 5 C. W. N., 347

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 179—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

(b) WHERE THERE HAS BEEN AN APPEAL.

4.—*Execution of decree—Injunction.*—The decree-holder obtained a decree for rent on the 12th January, 1892, and made an application for execution on the 10th March, 1892, which was dismissed on the ground of informality on the 30th June, 1892. On the 1st July, 1893, a temporary injunction was issued, restraining the decree-holder from executing the decree pending the decision of a suit brought by the judgment-debtor, in which it was *inter alia* prayed that the decree which had been executed should be set aside. The suit was decreed by the first Court, but on appeal it was dismissed, and the injunction was discharged on the 20th May, 1897. *Held* that the application, dated the 18th May, 1900, for execution of the rent-decree, was barred; and that the decree-holder was not entitled to a fresh starting point from the 20th May, 1897. SARUP GANJAN SINGH BHUYAN *v.* WATSON (1901) . . . 6 C. W. N., 735

5.—*Commencement of period of limitation for application to execute portion of decree not appealed against, where portion has been appealed against—Commencement of period of limitation*

appealed against and a portion has not, the period of limitation for an application to execute the portion not appealed against runs from the date of the original decree. In the case of a decree for the payment of money or the delivery of property, the period of limitation for an application to execute

MAL (F.B., 1902) . . I. L. R., 26 Mad.,

(c) WHERE THERE HAS BEEN A REVIEW.

6.—*Civil Procedure Code (Act XIV of 1882), s. 206—Limitation Act, Sch. II, Art 179 (3).*—A decree was passed on 31st December, 1892, and no appeal was presented by either party therefrom.

hich

July,

the

decree, and he again applied on ... April, 1893. On its being contended that the application was barred by limitation: *Held* that it was not barred. The order passed by the Court, determining the amount of costs, must be treated as a continuation or completion of the judgment, and the amendment made

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art 179—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*concluded.*

(c) WHERE THERE HAS BEEN A REVIEW—*concluded.*

(d) CLAUSE 4.

7.—The time from which limitation runs under ... Act is ... hich the ... *mad* v. ... *l*, 580; *Sarat Kumary Dassi* v. *Jagat Chandra Roy (1897), 1 C. W. N, 260*, followed. TROYLOKYA NATH BOSE *v.* JYOTI PROKASH NANDI (1903)

[I. L. R., 30 Calc., 761

3. NATURE OF APPLICATION.

(a) GENERALLY.

8.—*Limitation Act (XV of 1877), Sch. II, Art 179 (4)—Execution—Payment of bhatta—No fresh starting point*—An application for execution of a decree was made and granted on the 4th November ...

(b) IRREGULAR AND DEFECTIVE APPLICATIONS.

10.—*Execution of decree*—*Held* that an application for execution of a decree, which was defective

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 179—*continued.*

3. NATURE OF APPLICATION—*concluded.*

(b) IRREGULAR AND DEFECTIVE APPLICATIONS—*concluded.*

... with law, within the meaning of Art 179 of the second Schedule to the Indian Limitation Act, 1877. *Gopal Chunder Manna* v *Gosain Das Kalay (1898), I L. R., 25 Calc*, *594*, followed. KALKA DUBE *v* BISHESHAR PATAK (1901)

[I. L. R., 23 All., 162

... *general attorney, decree-holder being at the time within the jurisdiction of the Court.*—*Held* that an application in execution of a decree was not an application "in accordance with law," within the ...

limits of the jurisdiction of the Court executing the decree MURARI LAL *v.* UMRAO SINGH (1901)

[I. L. R, 23 All., 499

4 STEP IN AID OF EXECUTION.

(a) GENERALLY.

12—*Civil Procedure Code (Act XIV of 1882), ss 235, 274 and 287—Step in aid of execution—Failure by purchaser to secure possession of property purchased in execution—Execution incomplete*—A decree was passed in favour of the plaintiff in a ...

CHETTIAR *v.* KANNAMMAL (1900)

[I. L. R., 24 Mad., 185

13.—*Application for execution—Application to take a step in aid of execution—Distinction*—On 4th November, 1895, a decree-holder applied to the Court for the attachment of a sum of money belonging to the judgment-debtor, but which was in the hands

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 179—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

(*a*) GENERALLY—*concluded.*

of a Government Department. There was no prayer in the petition that the money should be paid to the petitioner. An order, purporting to be made under s. 272 of the Code of Civil Procedure, was made on 19th November, 1895, requesting the Department to remit the amount to the Court On 29th April, 1898, the Treasury Deputy Collector informed the Court that there was a balance due to the judgment-debtor. On 12th December, 1898, the decree-holder petitioned the Court, under ss. 268 and 272 of the

tion Act was not applicable to the case. VENKATARAMANAMMA *v.* PURUSHOTTAM (1900)

I. L. R., 24 Mad., 188

(*b*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.

14.—*Execution of decree—Act XV of 1877*

...cree-has ... the ... some obstacle which the decree-holder has to remove before he can get satisfaction of his decree; and where, it may be after an interval of three years, having removed that obstacle, he returns to the Court and prays

the decree-holder himself has acted dilatorily, and thereby been the cause of delay in the proceedings for execution *Paras Ram* v. *Gardner (1877), I. L. R., 1 All., 355 ; Raghubans Gir* v. *Sheosaran Gir (1882), I. L. R., 5 All., 243 ; Booboo Pyaroo*

15.—*Application in execution more than three years after previous application—Omission on part of judgment-debtor to set up bar by limitation—Adjudication on application—Subsequent application in execution—Objection on ground that previous application was barred—Res judicata.*—A decree was obtained on 16th March, 1893, and a petition in

An order was passed on the petition, for the issue of a warrant for the arrest of the defendant, and the warrant was duly issued. Within three years of that petition the present application in execution was made, when it was objected that, as the application

...inst it. ... was ... Court ... n to- determine whether the decree was barred, and had made an order in execution of the decree, it must be

16.—*Decree directing execution of muchalka, and costs—Recovery of costs in execution—Application to enforce execution of muchalka more than three years previously—Subsequent application for* ...—A decree

... Plaintiff now (namely,

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 179—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

(*b*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*concluded.*

17.—*Transfer of Property Act (IV of 1882), ss 88, 89—Decree for sale under s. 88—No order absolute under s. 89—Application by decree-holder for sale under Civil Procedure Code—Order as asked—No further applications in execution for more than three years—Then, application for order absolute, under s 89—Bar by previous order.*—A decree for sale of mortgaged property was passed on 30th August, 1895, under s 88 of the Transfer of Property Act. No order absolute for sale was asked for or made under s. 89 of the Transfer of Property Act. On 30th September, 1896, the decree-holder applied to the Court, under ss 286 and 287 of the Code of Civil Procedure, for an order directing the sale of the mortgaged property; and an order was passed accordingly. This application was subsequently dismissed for failure to pay the expenses. On 10th

[illegible]

inasmuch as his application was not one for execution, it was not barred by limitation under Art. 179 of Sch. II to the Limitation Act *Held* that the

[illegible]

[I. L. R., 24 Mad., 695

(*c*) MISCELLANEOUS ACTS OF DECREE-HOLDER

18.—*Seal warrant—Application for, in the Presidency Small Cause Court—Whether such an application is an application in accordance with law for execution or to take steps in aid of*

[illegible]

19.—*Application to postpone sale—Opposition to application of judgment-debtor.*—An application by the decree-holder to postpone a sale, not with a view to enable him to bring the property to sale more advantageously for him, but upon other grounds, is not an application to take some step in aid of execution *Abdul Hossein* v. *Fuzilun (1892),*

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 179—*continued.*

4. STEP IN AID OF EXECUTION—*concluded.*

(*c*) MISCELLANEOUS ACTS OF DECREE-HOLDER—*concluded.*

I L R, *20 Calc.*, 255, followed. The decree-holder's opposition, to an application of the judgment-debtor to sell the properties in an order different from that to which they have already been directed to be sold, is not an application to take some step in aid of

[illegible]

[I. L. R., 30 Calc., 101

5. NOTICE OF EXECUTION.

[illegible]

and not the date when the Court passes the order for issuing the notice. KADARESSUR SEN BABOR *v.* MOHIM CHANDRA CHAKRAVARTI (1902) . 6 C. W. N., 656

21.—*Art. 179, cl. (5)—Civil Procedure Code (Act XIV of 1882), s. 248—Decree—Execution—Notice to show cause why decree should not be executed—Date of the order—Step in aid of execution.*—Where a notice to show cause why a

[illegible]

6. ORDER FOR PAYMENT AT SPECIFIED DATES

22.—*Instalments—Instalment decree—Default in payment of instalments—Subsequent payment and acceptance of overdue instalments—Waiver.*—A decree obtained on the 27th June, 1887, by a mortgagee, against his mortgagor, directed that the sum of R1,050 should be paid by yearly instalments of R55, the instalments to be paid in the month of April in each year. It further provided

[illegible]

the decree, but he paid them, and they were accepted by the plaintiff, in the months of May, 1891, and May, 1892, respectively. He also paid subsequent instalments, and up to 1895 no single instalment remained unpaid at the date at which that immediately succeeding it became due. But he

[illegible]

LIMITATION ACT, 1877—*continued.*

Schedule II—*continued.*

——Art. 179—*concluded.*

6. ORDER FOR PAYMENT AT SPECIFIED DATES—*concluded.*

to execution arose in 1897 under the terms of the decree. The lower Appeal Court held that the [illegible] and [illegible] by [illegible] (by [illegible] lower [illegible] and acceptance of instalments in this case subsequently to 1892, the parties had been remitted to the same position as they would have been in if no default had then occurred, and that on the subsequent default in 1897 the plaintiff's right to execution arose, and that consequently his application in 1899 was in time. *Per* JENKINS, *C.J.*—The true view appears to me to be that, though there may be a failure to pay punctually under an instalment decree, still the subsequent conduct of the parties may preclude either of them from afterwards asserting that payment was not made regularly and in satisfaction of the obligation under the decree . . . This view is [illegible] the [illegible] ora- [illegible] his [illegible] that the payment was a regular satisfaction of the obligation, and the parties have acted on that belief, neither can afterwards deny the regularity. It is a fundamental proposition of law that payment and acceptance of overdue instalments cannot by themselves prove a waiver The point is one to be determined on the circumstances of each case. *Dulsook* v. *Chugon (1877), I. L. R., 2 Bom*, 356, and *Balaji* v. *Sakharam (1892), I. L. R*, 17 *Bom.*, 555, commented on. KASHIRAM *v.* PANDU (F.B., 1902)

I. L. R., 27 Bom., 1

——Art. 180—

1.—*Limitation—Expiration of period for presenting execution petition while Court closed—Presentation of defective petition on day of re-opening—Return for amendment—Re-presentation.*—The period of twelve years from the date of a decree expired when the Court was closed. The decree-holder presented a petition for execution of the decree on the first day on which the Court re-opened, but the petition was found to be defective, as it was not verified, and was otherwise defective. The Court returned the petition, under s. 245 of the Code of Civil Procedure, so that it might be amended. [illegible] after [illegible] that [illegible] made [illegible], and [illegible] holder [illegible] f the appeal in the lower Appellate Court, but before that Court delivered judgment. *Held* that the judgment should be read as from the date when the Court reserved judgment, and that it was not incompetent to the son of the decree-holder to prefer an appeal

LIMITATION ACT, 1877—*concluded.*

Schedule II—*concluded.*

——Art. 180—*concluded.*

to the High Court by reason of the fact that he had not been brought on the record before the judgment of the lower Appellate Court was delivered. *Held also* that it was not incumbent on the appellant to apply for execution to the Court which passed the decree. He had adopted the proper procedure in applying to the High Court to be brought on the record; and, an order having been passed, bringing him on the record, he was competent to present the appeal. RAGHUNATHA THATHA CHARIAR *v.* VENKATESA TAWKER (1902) I. L. R., 26 Mad., 101

2.—*Revivor—Execution of decree—Notice—Civil Procedure Code (Act XIV of 1882), ss.* 232, 248.—Where a notice was issued, under ss. 232 and 248 of the Civil Procedure Code, for the execution of a decree, and further proceedings were dropped until after the period allowed by limitation, computed from the date of such decree: *Held* that, there being no order made by the Court, such notice alone did not operate as a revivor of the decree, within the meaning of Art. 180, Sch. II, of the Limitation Act. [illegible]

[I. L. R., 30 Calc., 879: s.c., 7 C. W. N., 793

LIS PENDENS.

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[I. L. R., 25 Mad., 406

1.—*Execution of decree—Sale in execution pending an appeal in a suit under s 283 of the Code of Civil Procedure—Title of auction-purchaser subject to the result of the appeal.*—*J* brought a suit, under s. 283 of the Code of Civil Procedure, for a declaration that certain property was the property of the plaintiff, and not liable to be sold in execution of a decree against a third person. Her suit was dismissed by the Court of first instance. She thereupon appealed; but, while her appeal was pending, the decree-holder caused the property, the subject of the suit, to be sold, and it was purchased by *S P*, who subsequently transferred a portion of it to *J L*. On appeal *J*'s claim was decreed, and her title to the property established. Some considerable time after the passing of the decree in appeal, *J* brought a suit against *J L* and *S P* for recovery of the property purchased, as above mentioned, by *S P* at auction sale. *Held* that the doctrine of *lis pendens* applied, and that the title taken by *J L* was subject to the result of *J*'s appeal, which was pending at the time when the property was brought to sale. *Chunder Nath Mullick* v. *Nilakant Banerjee (1882), I. L. R., 8 Calc.*, 690; *Raj Kishen Mookerjee* v. *Radha Madhub Holdar (1874), 21 W. R., C. R.*, 349; *Ram Narain Singh* v. *Mahtab Bibi (1880), I. L. R., 2 All.*, 828; and *Rajah Enayat Hossain* v. *Girdharee Lall (1869),*

LIS PENDENS—*concluded.*

12 Moo. I. A., 366, referred to. SUKHDEO PRASAD *v.* JAMNA (1900) . . I. L. R., 23 All., 60

2.—*Act IV of 1882 (Transfer of Property Act), ss 88, 89—Decree for sale—Decree assigned before the passing of an order absolute—Appeal—Assignee not made a party to appeal until after expiry of limitation—Civil Procedure Code, s. 372.*—A decree under s 88 of the Transfer of Property Act, 1882, being only a decree *nisi* and not a final decree, the suit in which such a decree is passed does not terminate until an order absolute is made under s. 89. Where, therefore, such a decree is assigned before any order absolute is made, the assignee takes subject to all the liabilities resulting from the application of the doctrine of *lis pendens* Such an assignee, for example, may properly be made a party, under s 372 of the Code of Civil Procedure, to an appeal from the decree preferred against his assignors, and it is not competent to him to raise any defence, such as a plea of limitation, to the appeal, which could not be raised by his assignors. CHUNNI LAL *v* ABDUL ALI KHAN (1901)
[I. L. R., 23 All., 331

3. [illegible]

v. CHUNILAL LALCHAND (1902)
[I. L. R., 27 Bom., 266

LOAN.

See HINDU LAW—

GUARDIAN;
[I. L. R., 26 Bom., 433

JOINT FAMILY—DEBTS, AND JOINT FAMILY BUSINESS.
[7 C. W. N., 725

——repayment of, by instalments—

See TRANSFER OF PROPERTY ACT, s 83.
[I. L. R., 24 All., 461

——to executor—

See EXECUTOR . . 7 C. W. N., 104

LOCAL INQUIRY.

See POSSESSION—ORDER OF CRIMINAL COURT AS TO—LOCAL INQUIRY.

LOCAL INVESTIGATION.

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL.
[6 C. W. N., 295

LOCAL USAGE.

See CUSTOM.

LUNATIC.

See INSANITY.

LUNATIC—*concluded.*

1.—*Civil Procedure Code (Act XIV of 1882), s. 463—Suit against a lunatic not so adjudged—Lunacy (District Courts) Act (XXXV of 1858), ss. 2, 23—Appointment by Court of guardian ad litem to lunatic—Practice.*—The plaintiff in a suit against several defendants described the first defendant (a widow, and not a minor) as of [illegible]

did it appear that the Court of first instance had satisfied itself that first defendant was, in fact, a lunatic, or that it had approved of the guardian, named and appointed by the plaintiff, as a fit and proper person. The suit was only contested by the second defendant. By s 463 of the Code of Civil Procedure the provisions contained in ss 440 to 462 (which relate to the conduct of suits by and against minors) are directed to apply, *mutatis mutandis*, in the case of persons of unsound mind adjudged to be so under Act XXXV of 1858 or under any other law for the time being in force. The contention having been raised that the suit was bad and must be [illegible]

the maintenance of suits against persons of unsound mind who have not been so adjudged under the Act, the Court should appoint a fit and proper person as guardian *ad litem*, upon its being established that the first defendant was, in fact, of unsound mind. KADALA REDDI *v.* NARISI (1901)
[I. L. R., 24 Mad., 504

2.—Act XXXV of 1858 (Lunacy), ss. 9, 10 and 11, discussed and explained MUKUND KOERI *v* DEPUTY COMMISSIONER OF CHOTA NAGPUR (1902)
[I. L. R., 29 Calc., 638

3.—*Management of lunatic's estate—Custody of lunatic's person—Lunacy Act (XXXV of 1858), ss 7, 9*—Under s 9 of the Lunacy Act (XXXV of 1858), it is incumbent upon a District Judge to appoint a manager of the estate of a person adjudged to be of unsound mind If a lunatic be well taken care of by his own people at home, he should not be forced to go to lunatic asylum, there being apparently no provision in the Lunacy Act authorizing a District Judge to send such a person to the asylum *In re* JOGA KOER (1903)
[I. L. R., 30 Calc., 973

M

MADRAS ABKARI ACT (MAD. ACT I OF 1886).

—*Restriction prohibiting licensed vendor of toddy from having interest in the sale of arrack—Partnership agreement between licensed vendor of toddy and licensed vendor of arrack—Illegality—Void agreement.*—*A* held a license for the sale of toddy, while *B* held a license for the sale of arrack. *A* entered into an agreement of partnership with *B*

MADRAS ABKARI ACT (MAD. ACT I OF 1886)—*continued.*

in the business of vending arrack and toddy. At the time when this agreement was entered into, a rule framed under the Abkari Act prohibited a person having a license for the sale of toddy from being interested in the sale of arrack, or a person having a license for the sale of arrack from being interested in the sale of toddy. *A* subsequently sued *B* for dissolution of partnership and for the recovery of money due to him in respect of the partnership. *Held* that

business cannot be carried on by a partner who does not hold such a license. MARUDAMUTHU PILLAI *v.* RANGASAMI MOOPPAN (1901)
[I. L. R., 24 Mad., 401

——s. 24, cl. (*c*)—

— *License to sell arrack issued under the Act—Rule contained in license imposing duty on license-holder to obtain Collector's permission to sub-let—Agreement to sub-let and sell arrack to sub-lessee*

arrack in plaintiff's licensed shop, and that plaintiff should supply the liquor to be sold. Rule 21 of plaintiff's license imposed a duty on plaintiff to obtain the sanction of the Collector in case he should sub-let Neither plaintiff nor defendants obtained such sanction On a suit being filed by plaintiff for a sum of money due under the agreement: *Held* that the agreement was illegal, and that plaintiff could not sue on it. THITHI PAKURUDASU *v.* BHEEMUDU (1902) . I. L. R., 26 Mad., 430

——s. 34—

— *Power of officer in one Circle to arrest offenders in another.*—An officer of the Salt and Abkari Department, belonging to Circle A, received certain information and entered Circle B, and, under s 34 of the Madras Abkari Act, arrested an offender in the latter Circle. The Magistrate who, in due course, tried the offender, held that the officer's

MADRAS ABKARI ACT (MAD. ACT I OF 1886)—*concluded.*

——s. 34—*concluded.*

guilty of the offence with which he was charged. EMPEROR *v.* RAYALU KESIGADU (1902)
[I. L. R., 26 Mad., 124

——s. 55, cl. (*g*)—

— *"Wash" fit for distillation—"Materials" for manufacturing liquor.*—A liquid mixture known as "wash," consisting of jaggery and babool bark, and proved to be fit for distillation, constitutes "materials" for the purpose of manufacturing liquor, within the meaning of s. 55 (*g*) of the Abkari Act. QUEEN-EMPRESS *v.* GANGAYYA (1901)
[I. L. R., 24 Mad., 417

MADRAS ACT—

——1864—II—

See MADRAS REVENUE RECOVERY ACT.

——1865—VIII—

See MADRAS RENT RECOVERY ACT.

——1876—I—

See MADRAS LAND-REVENUE AMENDMENT ACT.

——1882—V—

See MADRAS FOREST ACT.

——1884—I—

See MADRAS CITY MUNICIPAL ACT.

———— IV—

See MADRAS DISTRICT MUNICIPALITIES ACT.

———— V—

See MADRAS LOCAL BOARDS ACT.

——1886—I—

See MADRAS ABKARI ACT.

——1889—I—

See MADRAS VILLAGE COURTS ACT.

——1891—I—

See MADRAS GENERAL CLAUSES ACT.

——1895—III—

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

——1897—III—

See MADRAS DISTRICT MUNICIPALITIES (AMENDMENT) ACT.

MADRAS CITY CIVIL COURT ACT (VII OF 1892).

——s. 3—

—*Jurisdiction—Suit for "breach of promise of marriage"—Contract of marriage between intended*

MADRAS CITY CIVIL COURT ACT (VII OF 1892)—*concluded.*

bridegroom and parent of intended bride—Cognizable by Small Cause Court—Presidency Small Cause Courts Act (XV of 1882), s 19 (q)—The phrase "breach of promise of marriage," which occurs in Art. (q) of s. 19 of the Presidency Small Cause Courts Act, has reference to the action as understood in English law, that is, between the parties who contemplate contracting the marriage, and not between an intended bridegroom and the

compensation for breach of promise of marriage A suit was filed in the City Civil Court for compensation for breach of promise of marriage; but the

MUHAMMAD ASHRUFF HUSSAIN SAHEB *v.* MUHAMMAD ALI (1901) . I. L. R., 24 Mad., 652

MADRAS CITY MUNICIPAL ACT (MAD. ACT I OF 1884)—

See DEFAMATION.

[I. L. R., 26 Mad., 43

——s. 341—

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY, OR OTHERWISE

[I. L. R., 25 Mad., 15

—*Liability of Government under taxing Acts,*

——ss. 392, 433 and 458—

—*Nuisance—Opening of burial and burning ground—"Convenient and fitting place"—Smoke*

MADRAS CITY MUNICIPAL ACT (MAD. ACT I OF 1884)—*concluded.*

——ss. 392, 433 and 458—*concluded.*

from burning ground—Actionable nuisance—Public body—Protection—Limitation—Continuing nuisance.—By s. 392 of the City of Madras Municipal Act, 1884, the Municipal Commissioners "shall . . . . provide a sufficient number of convenient and fitting places for burial and burning grounds, either within or without the limits of the City, and may acquire land for this purpose;" and s. 458 gives a right of action to any person aggrieved by the failure of the Commissioners to perform a duty imposed on them by the Act Plaintiff was

value. He accordingly sued for an injunction restraining the defendants from using the land acquired by them as a burial and burning ground, and for damages. No negligence was alleged or shown regarding the manner in which the burial ground had been used. There was some evidence that the burning ground was to some extent a source of nuisance to anyone who occupied plaintiff's premises, and that the market value of the premises had been depreciated by the opening of the burial ground. *Held* that no actionable nuisance had

damage from the establishment of a burning and burial ground does not show that the site selected is not "convenient and fitting" The words "within or without the limits of the City" must be read *secundum subjectam materiam,* and with reference to the requirements of the community in connection with the disposal of corpses, and the general necessities of the case. By s. 433 of the City of Madras Municipal Act, the period of limitation for the commencement of suits against the Commissioners in respect of anything done in pursuance of the powers given by the Act is fixed at six months. *Semble* that plaintiff's cause of action, if any, arose when the site began to be used as a burial ground, namely in 1896, and that the claim was barred by limitation, under both s. 433 and the general law. MUHAMMAD MOHIDIN SAIT *v.* MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS (1901)

[I. L. R., 25 Mad., 118

MADRAS CIVIL COURTS ACT (III of 1873).

——s. 16—

See MAHOMEDAN LAW—GIFT.

[I. L. R., 24 Mad., 513

MADRAS CIVIL COURTS ACT (III OF 1873)—*concluded.*

——s. 17—

See District Judge, Jurisdiction of.
[I. L. R., 26 Mad., 595

MADRAS DISTRICT MUNICIPALITIES ACT (MAD. ACT IV OF 1884).

——s. 3 (27)—

See Public Road, Highway, Street or Thoroughfare.
[I. L. R., 25 Mad., 635

——ss. 53 and 262—

—Carrying on business within the limits of a municipality—Business conducted by a local agent without power to make contracts on behalf of company—Levy of profession tax—Suit to recover amount paid—Substantial compliance with the provisions of the Act—Maintainability of suit.— [illegible]

[illegible]

money on the company as profession tax, under s 47 of the Madras District Municipalities Act, 1884; [illegible]

[illegible]

Municipal Council, Cocanada *v.* Standard Life Assurance Company (1900)
[I. L. R., 24 Mad., 205

——s. 53, and Sch. A, proviso 4—

—Person carrying on business as a money-lender —Liability to pay profession tax.—A person who carries on the business of a money-lender, and whose income is less than R30 per mensem, is not chargeable with a tax under s. 53 of the District Municipalities Act (Madras), 1884. Municipal Council of Chidambaram *v.* Venkatanarayana Pillai (1901) . . . I. L. R., 24 Mad., 644

MADRAS DISTRICT MUNICIPALITIES ACT (MAD. ACT IV OF 1884)—*continued.*

——s. 63—

1.—*Sub-ss. (2), (3)—Levy of tax—Legality.*—By s. 63 (2) of the District Municipalities Act [illegible]

[illegible]

tions mentioned, a tax levied under sub-s. (3) on all lands within a municipality is a legal tax. Queen-Empress *v.* Allan (1900)
[I. L. R., 24 Mad., 195

2.—*Sub-s. (3)—Madras District Municipalities Amendment Act (III of 1897), s. 49—"Lands used solely for agricultural purposes"—Liability to tax.*—By sub-s. (3) of s. 63 of the Madras [illegible]

[illegible]

Allan (1901) . . I. L. R., 25 Mad., [illegible]

——s. 262—

See ante, ss. 53 and 262.

——s. 269—

—Madras Act IV of 1884 (as amended by Madras Act III of 1897), s 269—Money due as tax, fee, [illegible]

[illegible]

cannot be convicted and fined under that section. Abdul Azeez Sahib *v.* Cuddapah Municipality (1902) . . . I. L. R., 26 Mad., 475

——Sch. A—

See ante, s. 53 and Sch. A, proviso 4.

—Shopkeeper or trader—District Forest-officer —Depot for sale of forest produce, conducted by

MADRAS DISTRICT MUNICIPALITIES ACT (MAD. ACT IV OF 1884)—*concluded.*

——Sch. A—*concluded.*

representative of Government—Liability to taxation.—A District Forest-officer, who, as the repre- [illegible]

FOR INDIA IN COUNCIL (1902)
[I. L. R., 25 Mad., 747

MADRAS DISTRICT MUNICIPALITIES (AMENDMENT) ACT (MAD. ACT III OF 1897)

——s. 5—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE
[I. L. R., 25 Mad., 635

——s. 49—

See MADRAS DISTRICT MUNICIPALITIES ACT (MAD ACT IV OF 1884), s 63
[I. L. R., 25 Mad., 627

MADRAS FOREST ACT (MAD. ACT V OF 1882).

—s. 21, cl (a)—*"Clearing"—Removal of trees or shrubs—Conviction where no evidence of such removed—Validity*—The word "clearing", as it is used in s 21 (a) of the (Madras) Forest Act of 1882, means something in the nature of the removal of trees or shurbs. Certain accused were convicted of an offence under the section, but there was no evidence on the part of the prosecution to show that [illegible]

[illegible]

MADRAS GENERAL CLAUSES ACT (MAD. ACT I OF 1891).

—s. 8—*Appellate jurisdiction of High Court in cases instituted under enactments in force at time* [illegible]

MADRAS GENERAL CLAUSES ACT (MAD. ACT I OF 1891)—*concluded.*

that the Court had jurisdiction. The appeal was from the judgment of a Court exercising original jurisdiction; and the High Court, if Madras Act II of 1894 had not been passed, would have had appellate jurisdiction, by virtue of s 540 of the Code of Civil Procedure, in suits brought under the said Regulations In cases where the Court of first instance had jurisdiction to entertain the suit when it was instituted, and the parties had a right of appeal when the suit was instituted, the appellate [illegible]

[I. L. R., 24 Mad., 39

MADRAS HEREDITARY VILLAGE OFFICES ACT (MAD. ACT III OF 1895).

—s. 3 (3)—*Village officers—Suit for lands forming emoluments of the office of Ambalam—"Head of the village"—Office in a "proprietary estate"—Office in Inam village—Grant confirmed by Government—Jurisdiction of Civil Court to* [illegible]

[I. L. R., 23 Mad., 490.

MADRAS LAND-REVENUE AMENDMENT ACT (MAD. ACT I OF 1876).

——s. 7—

See LIMITATION—STATUTES OF LIMITATION—MADRAS ACT I OF 1876, s 7.

MADRAS LOCAL BOARDS ACT (MAD. ACT V OF 1884).

—ss. 57, 64 and 149—*Wrongful collection of land cess from inamdar—Suit for its recovery against President, District Board—Maintainability of suit.*—A sum of money was collected from an *inamdar* as land cess under s. 57 of the Madras Local Boards Act, 1884. The amount had been assessed by the Collector of the district under s. 64, collected by him, and subsequently paid to the credit of the District Fund under s. 149 of the said Act. The *inamdar* filed a suit against the

MADRAS LOCAL BOARDS ACT (MAD. ACT V OF 1884)—*concluded.*

President of the District Board, to recover the amount, on the ground that *it had been illegally* collected from him. There was no claim for damages. On its being objected that the suit was wrongly brought against the President of the District Board: *Held* that the suit was not maintainable. The assessment and the collection of which plaintiff complained were not the acts of the defendant, who could not be called upon to make good the amount [illegible]

MADRAS MUNICIPAL ACTS.

See MADRAS CITY MUNICIPAL ACT.

See MADRAS DISTRICT MUNICIPALITIES ACT.

See MADRAS DISTRICT MUNICIPALITIES AMENDMENT) ACT.

MADRAS REGULATION.

——1802—III—s. 16, cl. (7)—

See APPEAL—ORDERS.
[I. L. R., 24 Mad., 95

————XXV—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.
[I. L. R., 26 Mad., 252

————XXVI—

See MADRAS RENT RECOVERY ACT, SS. 3 AND 80 . I. L. R., 26 Mad., 589

——————s. 3—

See MADRAS REVENUE RECOVERY ACT, SS. 5, 25 AND 44 . I. L. R., 26 Mad., 521

——1803—II—

——————s. 9—

See MADRAS RENT RECOVERY ACT, S 11
[I. L. R., 26 Mad., 456

——————s. 18—

See LIMITATION—STATUTES OF LIMITATION—MADRAS ACT I OF 1876, s. 7.
[I. L. R., 26 Mad., 389

——1816—XI—

—s. 10—*Confinement of Native Christian in stocks—Legality of order.*—By s 10 of Mad. Reg. XI of 1816, heads of villages are given summary [illegible]

MADRAS REGULATION—*concluded.*

——1816—XI—*concluded.*

punishment," they may be put in the stocks. A person who was a *Mala, or Hindu pariah, by birth,* [illegible] Christianity, was [illegible] and sen- [illegible] ocks under [illegible] that of a weaver, but he, in fact, worked as a coolie. On the [illegible] being refer- [illegible] to render a [illegible] *cks under the* [illegible] rence of two [illegible] degrading a punishment. The test is not what is the offender's creed, but what is his caste. *Semble,* that a person who has changed *his creed* but *continues* to belong to his caste may be within the purview of the Regulation if the caste is of the nature therein referred to; but if he abandons his caste he cannot longer be said to "belong to one of the lower castes of the people," and punishment by confinement in the stocks would no longer be legal. *The Queen* v. *Nabi, I. L. R., 6 Mad., 247,* discussed. RATTIGADU *v.* KONDA REDDI (1900)
[I. L. R., 24 Mad., 271

——1822—IV—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.
[I. L. R., 26 Mad., 252

——1828—VIII, s. 3—

See MADRAS RENT RECOVERY ACT, s. 11.
[I. L. R., 26 Mad., 456

MADRAS RENT RECOVERY ACT (MAD. ACT VIII OF 1865).

——distraint under—

See PENAL CODE, s. 424
[I. L. R., 25 Mad., 729

—s. 14—*Demand by landholder of an amount in excess of rent actually due by tenant—Non-compliance with demand—Attachment and sale in consequence of non-compliance—Legality.*—A landholder made a demand on his tenant for payment of a sum in excess of what was in fact due in respect of rent. The demand was not complied with, and, as a consequence of such non-compliance, the holding was attached and sold. *Held* that, inasmuch as the sale had been held by reason of a demand which was not shown to be correct, it must be set aside PICHUVAYENGAR *v.* OLIVER (1902)
[I. L. R., 26 Mad., 260

——ss. 3 and 80—

—*Tender of patta and process to recover rent, by holder of jaghir, before registration as jaghir-*

MADRAS RENT RECOVERY ACT (MAD. ACT VIII OF 1865)—*continued.*

—ss. 3 and 80—*concluded.*

dar—Validity—"Proceedings"—The holder of a *jaghir* is entitled to tender a *patta* under the Rent

(F.B., 1903) . . . I. L. R., 26 Mad., 589

—s. 4—

—*Patta containing name of tenant's father and not mentioning tenant—Death of the father before tender of patta—Tender of patta without alteration—Validity*—*Patta* for land was tendered to *A*, but stood in the name of *A*'s father It appeared that *A*'s father was really the tenant for the *fasli* in respect of which the *patta* had been tendered, but had died after the *patta* had been prepared and signed by the landholder *Held* that the tender was legal. SUBBIEN *v.* RAMASAMI CHETTY (1902)

[I. L. R., 26 Mad., 363

—s 10—

1 —*Purchase at Court sale of former tenant's interest in land—Liability of purchaser for rent, as from date of confirmation of sale.*—Defendant had purchased at a Court sale the interest of a former tenant in certain land in a *zamindari*. The sale was confirmed on 31st March, 1900, and possession was given to defendant on 11th May, 1900. The landlord now sued to enforce the acceptance by defendant of *patta* for *fasli* 1309, being the year commencing on 1st July, 1899, and ending on 30th June, 1900 By the terms of the *muchilikas* which had been executed by the former tenant, rent was payable in four equal instalments, on 1st October, 1st February, 1st April and 1st May. *Held* that the defendant was liable for the instalments which fell due subsequently to the confirmation of sale, ... *Also*, that ... liability for ... ssion of the ... ORAI AYYAR (1901). . . . I. L. R., 25 Mad., 454

2.—*Suits to enforce acceptance of patta—Necessity for tender of patta after judgment, where patta originally tendered is either upheld*

—s. 10—*concluded.*

tenant did not accept the same and execute a *muchilika* before the expiration of the said period of ten days. *Court of Wards* v. *Darmalinga, I. L. R., 8 Mad., 2*, commented on. SHANMUGA MUDALY *v.* PALNATI KUPPU CHETTY (F.B., 1902)

[I. L. R., 25 Mad., 613

—ss. 10 and 69—

Adjudication that plaintiff has failed

—s. 11—

—*Cl. 4—Sanction by Deputy Collector of enhanced rent—Cancellation of sanction by Collector—Validity—Mad. Reg. II of 1803, s. 9—Mad. Reg. VII of 1828, s. 3—Powers of supervision vested in Collector—Tender of patta within fasli—Order sanctioning enhanced rent, passed after termination of fasli—Effect*

gener

by s.

Reg.

order of a Deputy Collector, passed under s. 11, cl. 4, of the Rent Recovery Act, sanctioning an

... was enhanced at the rate of one rupee per acre. The enhancement was justified on the ground (among others) that the Government had added a corresponding increase to the water-rate and that the Deputy Collector had, under s. 11, cl. 4, of the Rent Recovery Act, sanctioned the enhanced rent Such an order had, in fact, been passed, but it had been

one rupee per acre: *Held* that the Collector had

MADRAS RENT RECOVERY ACT (MAD. ACT VIII OF 1865)—*continued.*

——s. 11—*concluded.*

were not bound to accept *pattas* in which an enhanced rate not sanctioned by the Deputy Collector till 29th August was charged. ZEMINDARNI OF NIDADAVOLE *v.* SAGIRAZU KRISHNAM RAZU (1902) [I. L. R., 26 Mad., 456

——ss. 15, 17 and 18—

—*Statement of place in which distrained property is kept—"The property is with the distrainer"—Sufficiency—Maintainability of suit.*—In a suit, instituted under s. 18 of the Rent Recovery Act, to set aside a distraint on the ground that it had been illegally carried out, plaintiff complained that the authority to distrain did not contain the particulars required by s. 15 of the Act. The property, which consisted of some small jewels, was described as being "with the distrainer." *Held* that, with regard to property of this description, the statement was sufficient. Whether the failure to state the place where property which has been distrained is kept is a ground for a suit under s. 18 of the Rent Recovery Act to set aside the distraint—*Quære.* VIRARAGHAVA AYYANGAR *v.* KANAGAVALLI AMMAL (1901) [I. L. R., 25 Mad., 503

——s. 20—

—*Death of cattle distrained*—A landlord distrained cattle, belonging to his tenant, for arrears of rent. The distraint was held, in a suit, to be illegal, the judgment being delivered on 7th September, 1898. Out of 17 animals which were distrained, only 11 were restored to plaintiff, the date of their restoration being the 28th November, 1898. Of those which were not restored, four died more than thirty days prior to the institution of the suit, one died within thirty days of suit, and one died after the suit had been filed. Upon a summary suit being filed by the tenant to recover the value of the cattle illegally distrained: *Held* that the cause of action arose on the date of the death of the cattle, and that plaintiff was only entitled to recover the value of one animal. *Also*, that he would have been entitled to recover the loss sustained by being deprived of the services of the cattle, had he so framed his suit. JAGANNADHA RAO PANTULU GARU *v.* NIDAMARTI UMMAYYA (1902) [I. L. R., 26 Mad., 183

——s. 33—

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE. [I. L. R., 24 Mad., 307

——s. 38—

See MONEY HAD AND RECEIVED. [I. L. R., 25 Mad., 548

——s. 39—

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE [I. L. R., 24 Mad., 307

—*Practice—Point not taken in plaint or at settlement of issues—Right to raise it on appeal.*—

MADRAS RENT RECOVERY ACT (MAD. ACT VIII OF 1865)—*concluded.*

——s. 39—*concluded.*

Where a plaintiff in a suit to set aside a sale of land fails to take the objection, either in his plaint or at settlement of issues, that the notice of sale prescribed by s. 39 of the Rent Recovery Act had not been served upon him, he should not be allowed to raise it on appeal. SUBBIEN *v.* RAMASAMI CHETTY (1902) . . I. L. R., 26 Mad., 363

——s. 69—

See ante, ss. 10 AND 69.

See REMAND—CASES OF APPEAL AFTER REMAND . I. L. R., 26 Mad., 518

—*Delay in presenting appeal—Power of Court to excuse—Limitation*—Under s. 69 of the Rent Recovery Act, a Court has no power to excuse delay in presenting an appeal from a judgment from the Court of first instance in a suit by a tenant to set aside a distraint, made by a landholder under the provisions of the Rent Recovery Act (Madras). BHUJANGA RAO *v.* VENKANNA (1901) . . . I. L. R., 24 Mad., 558

——s. 78—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT. [I. L. R., 25 Mad., 540

—*Six months from date of cause of action—Illegal attachment by landholder of tenant's property—Retention for more than six months—Continuing wrong—Limitation.*—By s. 78 of the Rent Recovery Act (Madras), 1865, a suit may be brought to recover damages in respect of anything professedly done under the authority of that Act, provided that it be instituted within six months from the time at which the cause of action arose. A landholder illegally attached goods of his tenant, and detained them for longer than six months. The tenant then sued to recover the goods, and damages for the illegal detention. *Held* that the claim was not barred, the detention being a continuing wrong. YAMUNA BAI RANI SAHIBA *v.* SOLAYYA KAVUNDAN (1901) . . . I. L. R., 24 Mad., 339

——s. 80—

See ante, ss. 3 AND 80.

MADRAS REVENUE RECOVERY ACT (MAD. ACT II OF 1864).

——suit based on action of Village officer—

See SECRETARY OF STATE. [I. L. R., 26 Mad., 263

——s. 2—

See CONTRIBUTION, SUIT FOR—PAYMENT ON JOINT-DEBT BY ONE DEBTOR. [I. L. R., 26 Mad., 686

See LAND-REVENUE. [I. L. R., 26 Mad., 730

MADRAS REVENUE RECOVERY ACT (MAD. ACT II OF 1864)—*continued.*

——ss. 5, 25 and 44—

—*Sale of property of a defaulter for arrears of revenue—Mad Reg. XXVI of 1802, s 3—Register of transfer—Act I of 1890, s. 6 (3) (4)—"Entire estate" of defaulter—Lands held under different pattas—Sale of land comprised in one patta—No arrears of revenue due—Subsequent sale of same land for arrears of revenue due on other land held under different patta—Validity.*—First defendant held lands, under two separate *pattas*, in two different villages The land situated in one of the villages was, in 1897, sold at a Court sale in execution of a decree, and was purchased by plaintiff. At the date of this sale no arrears of revenue were due in respect of any of first defendant's lands situate in either village At a date subsequent

which he had purchased at the Court sale. Plaintiff now sued for a declaration that the sale to second defendant for arrears of revenue was invalid. *Held* that plaintiff was entitled to the declaration. *Per* MOORE, J.—Inasmuch as plaintiff had failed to obtain a transfer of *patta* into his own name after his

village. Having regard to s 6 (3) (4) of Act I of 1890, the "movable and immovable property of a defaulter," referred to in s. 5 of Madras Act II of 1864, must be taken to mean the interest of the defaulter in the land Inasmuch as the interest of

with reference to a single person, must be read as meaning the "entire estate" and, before s 3 of the Regulation can apply, the "estate" must be such as had "revenue due to Government" upon it. A *patta* represents an entire estate, and land held under another *patta* forms another estate. NARAYANA RAJA *v.* RAMACHANDRA RAJA (1902)

[I. L. R., 26 Mad., 521

——s. 32—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

[I. L. R., 26 Mad., 686

——ss. 38 and 39—

—*Sale of land for arrears of revenue—Proclamation of purchaser's name - Subsequent contention that purchase was benami—Validity.*—Where land has been sold for arrears of revenue, under the Revenue Recovery Act of 1864, and the name of the purchaser has been published in pursuance of s. 39 of that Act, the effect of such proclamation is to vest the property absolutely in the purchaser as there named, and it will not be open to anyone to contend subsequently that the purchaser was a *benamidar* and that the real purchaser was someone else *Tirumalayappa Pillai* v. *Swami Naickar, I L. R, 13 Mad., 469,* and *Subbarayar* v. *Arirvatha Upadesayyar, I. L. R., 20 Mad, 494,* explained. NARAYANA CHETTIAR *v.* CHOKKAPPA MUDALIAR (1901) . . . I. L. R., 25 Mad., 655

——s. 42—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR

[I. L. R., 26 Mad., 686

See LAND REVENUE.

[I. L. R., 26 Mad, 730

—*Land Improvement Loans Act (XIX of 1883), s. 7, cl. 1 (a)—Revenue Recovery Act—Advance to owner of two pieces of land—Security taken on one alone—Sale of the other piece in*

[I. L. R., 25 Mad., 573

MAGISTRATE—*continued.*

2. POWERS OF MAGISTRATES—*concluded.*

6. ———— *Criminal Procedure Code (Act V of 1898), s. 528—Order by Sub-Divisional Magistrate, transferring case from one Sub-Magistrate to another—Order by District Magistrate, cancelling that order and re-transferring the case—Legality.*—A District Magistrate has no power to cancel an order made by a Sub-Divisional Magistrate directing the transfer, under s 528 of the Criminal Procedure Code, of a case from the file of one Sub-Magistrate to that of another Sub-Magistrate, and to direct the re-transfer of the case to the file of the Sub-Magistrate from whom it was transferred. RAGHUNATHA PANDARAM *v.* EMPEROR (1902) . . . I. L. R., 26 Mad., 130

7.—Report by police officer of another district—*Jurisdiction—Report by police officer of one district; proceedings instituted by Magistrate of another district—Code of Criminal Procedure (Act V of 1898), s. 145.*—The Magistrate of ... proceedings ... Procedure on ... cer of another ... s of the land or ... he within his ... GARTH (1902) . . . I. L. R., 29 Calc., 835; [s.c., 6 C. W. N., 378

3. WITHDRAWAL OF CASES.

8.—*Transfer—Withdrawal of case by District Magistrate—Inquiry or trial—Code of Criminal Procedure (Act V of 1898), ss. 253, 258*—Where a case which was being tried by a Deputy Magistrate, who was about to frame charges against the accused persons, was withdrawn by the District Magistrate to his own file, and dismissed under s. 253 of the Criminal Procedure Code on the ground that the accused, who were policemen, were protected by ...

4. RE-TRIAL OF CASES.

9.—*Conviction—Offence exclusively triable by Court of Session—Accused, discharge of, by Sessions Judge, on appeal—Re-trial, no order for—Re-trial and commitment of accused—Jurisdiction—Criminal Procedure Code (Act V of 1898), ss 215, 403, 423 and 530—Indian Post Office Act (VI of 1898), s 52*—Where an accused was ...

MAGISTRATE—*concluded.*

4. RE-TRIAL OF CASES—*concluded.*

by another Magistrate against the accused, who was committed for trial to the Court of Session: *Held* ... empowered ... n, and does ... m, there is ... f competent ... proceedings against the accused and committing him. *Held, further*, that, inasmuch as s. 423 of the Criminal ... a re-trial ... the trial ... e Magis- ... no trial ... ns Judge ... ABDUL GHANI *v.* EMPEROR (1902) [I. L. R., 29 Calc., 412

MAHOMEDAN LAW.

——assignment of undivided share (mushaa) of property—

See DEBTOR AND CREDITOR. [I. L. R., 26 Bom., 577

——buildings on land compulsorily acquired—

See ZANZIBAR . L. R., 28 I. A., 121

MAHOMEDAN LAW—CUSTOM.

——evidence of—

See MAHOMEDAN LAW—INHERITANCE. [I. L. R., 23 All., 20

—*Graveyard—Land formerly used as graveyard—Right of performing rites at the graves—Bom Reg. IV of 1827, s. 26*—Certain land at Dharwar, which had formerly been used as a graveyard by the Mahomedan community there, but which had been disused as such for twenty or thirty years, was sold by the owner to defendant 4, who thereupon commenced to prepare the foundations of a house which he proposed to build upon it. The plaintiffs, who were Mahomedan residents at Dharwar, brought this suit, alleging that the Mahomedans of Dharwar were accustomed to perform religious rites and ceremonies at the graves in the said land, and praying for a declaration that they were entitled so to do, and for an injunction ... obstructing them. ... on and ... -By the ... t which ... und in ... as for ... of the ... certain religious ... the soil ... to bury ... ect to the the right

MAHOMEDAN LAW — CUSTOM — *concluded.*

to perform all customary rites RAMRAO NARAYAN BELLARY *v.* RUSTUMKHAN (1901)
[I. L. R., 26 Bom., 198

MAHOMEDAN LAW—DEBTS.

creditors have the right to sue such of the heirs as have taken the estate, but they are entitled to have recourse to a single heir only in a case where all the effects are in the hands of that heir. PATHUMMABI *v.* VITTIL UMMACHABI (1902)
I. L. R., 26 Mad., 734

MAHOMEDAN LAW—DOWER.

1.—*Suit on a mortgage executed by judgment-debtor—Decree for sale—Decease of judgment-debtor—Sale by Court—Attempt by purchaser to obtain possession—Resistance by widow on ground that her dower formed a charge on the land.*—A widow's claim for dower under Mahomedan Law is not a lien on her husband's property, such as is obtained by a mortgage, but ranks on a par with ordinary debts. AMEER AMMAL *v.* SANKARANARAYANAN CHETTY (1901)
[I. L. R., 25 Mad., 658

2.—*Widow in possession in lieu of dower—Widow not precluded from suing to recover her dower.*—*Held* that there was nothing to prevent a Mahomedan widow, who was in possession of property of her late husband in lieu of dower, from suing to recover her dower from the heirs of the deceased husband. *Aziz-ullah Khan v. Ahmad Ali Khan (1885), I. L. R., 7 All., 353,* referred to. GHULAM ALI *v.* SAGIR-UL-NISSA BIBI (1901)
[I. L. R., 23 All., 432

MAHOMEDAN LAW—ENDOWMENT.

RAHIM (1900)
[5 C. W. N., 177; s.c., L. R., 28 I. A., 15; I. L. R., 23 All., 233

2.————— *Shias—Waqf—Invalid waqf—Condition suspending operation of waqf-*

MAHOMEDAN LAW—ENDOWMENT— *continued.*

nama—Condition that waqf-nama should not take effect until registration.—According to the

3.————— *Waqf of money held to be valid.*—*Held* that, according to the Mahomedan law, a *waqf* of movable property may be validly constituted. *Fatima Bibee v. Ariff Ismailjee Bham (1881), 9 C. L. R., 66,* dissented from. ABU SAYID KHAN *v.* BAKAR ALI (1901)
[I. L. R., 24 All., 190

4.————— *Waqf—Essentials of a valid waqf, according to the Shia law—Illusory dedication.*—One Muhammad Faiyaz Ali Khan, a Mahomedan of the *Shia* sect, on the 7th of May, 1878, caused to be drawn up an instrument, by which he

The settlor, however, after naming himself as the *mut-*

always be acted on after his death, and, so far as he himself was concerned, laid down no rules for the

MAHOMEDAN LAW—PRE-EMPTION —*concluded.*

successful plaintiff did not by that transaction forfeit the fruits of her decree. *Rajjo* v. *Lalman (1882), I. L. R., 5 All., 180,* distinguished. *Ram Sahai* v. *Gaya (1894), I. L. R., 7 All., 107,* referred to. Bela Bibi v. Akbar Ali (1901)
[I. L. R., 24 All., 119

MAHOMEDAN LAW—WIDOW.

See Mahomedan Law—Dower.

— *Alienations by widow—Validity.*—According to the Mahomedan Law, the widowed mother is not the legal guardian of the property of her minor children, and cannot do any act relating to their property so as to bind them, and a sale or mortgage

Mahomedan Law, unlike the Hindu Law, does not constitute the senior co-heir the managing co-parcener, entitled to administer and manage the estate until partition. Alienations by such a widow cannot, therefore, be upheld by extending to Mahomedans the principle of Hindu Law applicable to the acts of a guardian or managing member of a family. Pathummabi v. Vittil Ummachabi (1902)
[I. L. R., 26 Mad., 734

MAHOMEDAN LAW—WIFE.

See Mahomedan Law—Dower.

MAHOMEDAN LAW—WILL.

See Mahomedan Law—Endowment.
[I. L. R., 25 All., 236

— *Testator—Bequest to stranger of more than one-third of testator's property—Consent of heirs—Alienation—Attachment—Civil Procedure Code (Act XIV of 1882), s. 276.*—Where a Mahomedan, by his will, bequeaths more than one-thi[illegible]
of
me
h[illegible]

Daulatram Khushalchand v. Abdul Kayum Narudin (1902) . . I. L. R., 26 Bom., 497

MAINTENANCE.

See Contract—Construction of Contracts . . L. R., 28 I. A., 198

See Execution of Decree—Application for Execution, and Powers of Court.
[I. L. R., 26 Bom., 707

MAINTENANCE—*concluded.*

See Grant—Construction of Grants.
[I. L. R., 26 Mad., 202
" 23 All., 194

See Hindu Law—Maintenance.

See Res Judicata—Cause of Action—Continuing Guarantee.
[I. L. R., 27 Bom., 418

See Small Cause Court, Mofussil—Jurisdiction—Maintenance.

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

1.—*Criminal Procedure Code, ss. 498, 499, 490—*[illegible]

Procedure, and the parties afterwards come to an agreement between themselves as to what is to be paid, the existence of such agreement will not of itself be a bar to the enforcement of the order for maintenance; but it will be the duty of the party chargeable, if he wishes to be relieved from the payment of the maintenance allowance, to bring such settlement to the notice of the Court and obtain a cancellation of the order for maintenance. *Rangamma* v. *Muhammad Ali (1886), I. L. R., 10 Mad., 13,* not followed. Prabhu Lal v. Rami (1902) . . . . I. L. R., 25 All., 165

2.—*Criminal Procedure Code, s. 488—Application for cancelment of order for maintenance.*—Where it is sought, under s. 488, sub-ss. (4) and (5), of the Code of Criminal Procedure, to have an order passed under sub-s. (1) of s. 488 set aside, such application must be made to the Magistrate who passed the original order, or to his successor in office, who, and who only, has jurisdiction in the matter. Bhagwania v. Sheo Charan Lal (1903)
[I. L. R., 25 All., 545

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT, 1887 (MAD. ACT I OF 1887).

——ss. 2, 3, 4, 6—

See Landlord and Tenant—Property in Trees and Wood on Land.
[I. L. R., 24 Mad., 47

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT, 1900 (MAD. ACT I OF 1900).

——ss. 3, 4, 7, 10—

See Landlord and Tenant—Property in Trees and Wood on Land.
[I. L. R., 24 Mad., 47

MALABAR LAW.

— *Liability of improvements made by subtenants of kanomdar for rent due by kanomdar to*

MALABAR LAW—*concluded.*

jenmi.—Whether improvements made by the subtenants of a *kanomdar* are liable for rent due by the *kanomdar* to the *jenmi*—*Quære* *Achuta* v. *Kali*, *I. L. R.*, 7 *Mad.*, 545, and *Erassa Menon* v. *Shama Patter*, *I. L. R.*, 21 *Mad.*, 138, referred to. VEDAPURATTI v. AYARA (1901)

[I. L. R., 25 Mad., 568

MALABAR LAW—CUSTOM.

—*Kaikanom lease for indefinite period—Customary law as to duration of lease.*—By the customary law of Malabar, a tenant under a *kanom* or *kuikanom* lease is entitled not to be redeemed or ejected until the expiration of twelve years But, where no time is fixed for the duration of the lease, it does not, under the customary law, determine on the expiration of twelve years from its date KELAPPAN v. MADHAVI (1901) . . . . I. L. R., 25 Mad., 452

MALABAR LAW—ENDOWMENT.

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS

[I. L. R., 26 Mad., 461

1.—*Appointment of trustee to tarwad charities by karnavan—Validity.*—Though the *karnavan* of a Malabar *tarwad* has the power, unless specially limited by family usage or agreement, of himself . . .

2.—*Suit against karnavan as manager of tarwad—Attachment of tarwad property under decree—Subsequent order of release—Suit to cancel order of release, barred by s 244 of Civil Procedure Code.*—Plaintiff in a suit obtained a decree against the *karnavan* of defendants, as senior member and manager of the *tarwad*, and attached *tarwad* property in execution thereof Objection was then raised by defendants that the property was not liable under the decree, and the property was ordered to be released. Upon a suit being brought by plaintiff against defendants for the cancellation of the last-mentioned order. *Held* that the suit was not maintainable, by reason of s 244 of the Code of Civil Procedure KAMAL KUTTI v. IBRAYI (1901)

[I. L. R., 24 Mad., 658

MALABAR LAW—INHERITANCE.

. . . *of* . . . *thout* . . . de- . . . cuted a hypothecation bond over certain property in plaintiff's favour, subject to a prior mortgage which had been executed by his uncle in favour of *P.* . . . caused the . . . l for sale, . . . as allowed, . . . purchased

MALABAR LAW—INHERITANCE—*concluded.*

the property subject to *P*'s and plaintiff's debts . . .

. . . of the . . . rather than to his . . .—*Quære.* . . .

MALABAR LAW—JOINT FAMILY.

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . I. L. R., 24 Mad., 293

MALABAR LAW—MORTGAGE.

1.—*Suit by one of two co-uralans for redemption of mortgage without allegation or proof that the* . . . *the suit*— . . . *co-uralans* . . . e without . . . had been . . . *Savitri* . . . *L. R.*, 24 *Mad.*, 296, distinguished KARATTOLE EDAMANA v. UNNI KANNAN (F B, 1903)

[I. L. R., 26 Mad., 649

2.—*Suit to redeem kanom—Failure to prove "special exigency," less than twelve years having expired—Maintainability of suit—"Avasyamayi Chodikambole"—"Avasyamayi Varumbole"*—By the custom of Malabar, a *kanom* enures for twelve years, unless the parties to it have by express contract provided for its redemption at an earlier date A . . .

. . . on a *jenmi* the obligation of proving "some special exigency" as a condition precedent to his right to recover "on demand" before twelve years have elapsed. *Mahomed* v. *Ali Koya*, *I. L. R.*, 14 *Mad.*, 76, dissented from KELU NEDUNGADI v. KRISHNAN NAIR (1903) I. L. R., 26 Mad., 727

MALICE.

See DEFAMATION.
[I. L. R., 30 Calc., 402

See MALICIOUS PROSECUTION.

See PRIVILEGED COMMUNICATION.
[7 C. W. N., 246

MALICIOUS PROSECUTION.

See FALSE CHARGE.
[I. L. R., 29 Calc., 479

See LIMITATION ACT, 1877, SCH. II, ARTS 24 AND 25
[I. L. R., 24 All., 368

1.—Onus probandi—*Proof of plaintiff's innocence—Insufficiency of proof that the charge against plaintiff has been dismissed.*—In a suit for damages for malicious prosecution, plaintiff, with the object of proving the falsity of the charge which defendant had preferred against him, filed the order of the Magistrate dismissing the charge under s. 209 of the Code of Criminal Procedure, and adduced oral evidence. The latter was not accepted as reliable, the falsity of the charge being taken as established solely by the said order of dismissal. *Held* that this was insufficient, the *onus* being on the plaintiff to prove that he was innocent and that his innocence had been pronounced by the tribunal before which the accusation had been made *Abrath* v *North Eastern Railway Co., L R, 11 Q B. D, 440; L. R, 11 App. Cas., 24*, referred to. NALLIAPPA GOUNDAN *v.* KAILAPPA GOUNDAN (1900)
[I. L. R., 24 Mad., 59

2. ——————— *Innocence—Reasonable and probable cause—Malice—Judge of law and facts*—In a suit for malicious prosecution, in order to enable the plaintiff to succeed he must prove, *first*, that

probable cause is, if the case is tried by a Judge with a jury, a question for the Judge, and not for the jury; but, in India, where there is no jury, the Judge becomes himself the Judge of the law and the facts. *Pestonji Mody* v *The Queen Insurance Company (1900), I. L R., 25 Bom, 332*, referred to. HARISH CHUNDER NEOGY *v.* NISHI KANTA BANERJEE (1901)
[I. L. R., 28 Calc., 591; s.c., 6 C. W. N., 159

3. ——————— *Suit for damages for—Reasonable and probable cause.*—In a suit for damages for malicious prosecution, the *onus* of proving that the plaintiff is innocent of the charge brought against him, that the defendant acted without reasonable and probable cause, and that the defendant acted maliciously, is on the plaintiff. SYAMA CHARAN KAR ... MOKAR *v.* JHATOO HALDAR (1901)
[6 C. W. N., 298

MALICIOUS PROSECUTION—*continued.*

4.—Reasonable and probable cause—Onus probandi—*Question of malice and reasonable and probable cause—Concurrent findings of lower Courts*—In an action for malicious prosecution, in which the plaintiff claimed Rs. 3,00,000 as

5. ——————— *Finding on reasonable and probable cause.*—Plaintiff had been charged by defendant with the destruction of defendant's crop,

state of things, the complaint and prosecution by defendant must be presumed to have been made maliciously; I accordingly find the issue for the plaintiff and against the defendant, and hold that

...use." ...ed to ...pro- ...umed

malice from the fact that the conviction of the plaintiff had been ultimately quashed by the High Court and, having presumed malice, he found the issue for the plaintiff. The absence of probable cause does not imply malice in law. *Mody* v. *Queen Insurance Co., I. L. R, 25 Bom, 332*, and *Hall* v. *Venkatakrishna, I. L. R, 13 Mad, 394*, followed. RAMAYYA *v.* SIVAYYA (1900)
[I. L. R., 24 Mad., 549

6. ——————— *Suit for damages for malicious prosecution—"Malice"—"Reasonable and probable cause."*—"Reasonable and probable cause,"

...lief in ...viction, ...nce of ...them ...ordin-

MALIKANA—*concluded.*

1859.—There may be an out-and-out sale of the *malikana* rights in a newly-accreted estate apart from the parent estate. *Khub lal* v. *Ghina Hazari (1869), 2 B. L. R., 339,* followed PROMOTHA NATH MAJUMDAR *v.* ROBERT WATSON & Co, LD (1903) . . . . 7 C. W. N., 846

MAMLATDAR, JURISDICTION OF.

See MAMLATDARS' COURTS ACT.

—*Possessory suit—Jurisdiction—Previous order of Magistrate under s. 145, Criminal Procedure Code (Act V of 1898).*—On the 22nd of December, 1900, a Magistrate passed an order, under s. 145 of the Criminal Procedure Code (Act V of 1898), deciding that, on the 20th of October, 1900, one Sayad Martooza was in actual possession of certain land. On the 6th of March, 1901, the plaintiff brought this suit against the defendants (of whom the said Sayad Martooza was one) to recover possession of the said land, alleging that on the 10th of October, 1900, the defendants had wrongfully dispossessed him of it. The *Mamlatdar* held that, having regard to the Magistrate's order of the 22nd of December, 1900, he had no jurisdiction to hear the suit. On application to the High Court: *Held* (remanding the case for disposal) that the *Mamlatdar* had jurisdiction to try the case. *Lillu* v. *Annaji (1881), I. L. R, 5 Bom., 387,* distinguished. NAGAPPA *v.* BADRUDIN (1901)
[I. L. R., 26 Bom., 353

MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876).

——**exercise of powers conferred by—**

See BOMBAY LAND-REVENUE CODE (BOM. ACT V OF 1879), s. 15.
[I. L. R., 25 Bom., 318

——s. 4—

—*Natural water-course—Riparian proprietors—Obstruction to the flow of water—Injunction—Jurisdiction.*—*Held* by the Full Bench (WHITWORTH *J*, dissenting) that a *Mamlatdar* has, under the *Mamlatdars'* Courts Act (Bom. Act III of 1876), jurisdiction to inquire into a case in which it is alleged that an upper riparian proprietor has unduly interfered with the flow of water in a natural water-course from which a lower riparian proprietor also takes water. SOM GOPAL BHOGALE *v.* VINAYAK BHIKAMBHAT (1900) . I. L. R., 25 Bom., 395

——s. 13—

—*Limitation Act (XV of 1877), Sch. II, Art. 47—Possessory suit—Mamlatdar's Court.*—In a possessory suit instituted in a *Mamlatdar's* Court, neither the plaintiff nor the defendant appeared at the hearing. The case was therefore disposed of by the *Mamlatdar*, under the first part of s. 13 of the *Mamlatdars'* Courts Act (Bombay Act III of 1876). *Held* that the order of the *Mamlatdar* was an order rejecting the plaint. A regular suit for possession having been brought in a Civil Court more than

MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876)—*concluded.*

——s. 13—*concluded.*

three years after the above order of the *Mamlatdar*: *Held* that the suit was time-barred under Art. 47, Sch. II, of the Limitation Act (XV of 1877). PURUSHOTTAM DAYARAM *v.* CHATARGIR GURU ARJUNGIR (1900) . . I. L. R., 25 Bom., 82

MANAGEMENT OF ESTATE BY COURT.

See CRIMINAL PROCEDURE CODE, s. 146.
[I. L. R., 29 Calc., 382

—*Rights of judgment-creditors.*—There is no law or procedure under which a Court can, on the mere application of the parties interested, take over the management of properties belonging to an estate, and pass such orders as would place them entirely beyond the reach of the judgment-creditors of the estate. PURAN MAL *v.* JANKI PERSHAD SINGH (1901) . . . I. L. R., 28 Calc., 680;
s.c., 6 C. W. N., 114

MANAGER.

——**liability of landlord for acts of—**

See RIOTING . I. L. R., 28 Calc., 504

——**of Court of Wards—**

See PUBLIC SERVANT.
[I. L. R., 28 Calc., 344

——**of endowment—**

See HINDU LAW—ENDOWMENT.

——**of endowment, removal of—**

See ACT—1863—XX, s. 14.
[I. L. R., 24 Mad., 243

——**of indigo concern—**

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS . . . 7 C. W. N., 208

——**of joint family—**

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.
[I. L. R., 27 Bom., 287

See HINDU LAW—JOINT FAMILY—

NATURE OF JOINT FAMILY, AND POSITION OF MANAGER;

DEBTS, AND JOINT FAMILY BUSINESS; 7 C. W. N., 725

POWERS OF ALIENATION BY MEMBERS—MANAGER.

See PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION . I. L. R., 28 Calc., 769

MANAGER—*concluded*.

——of land—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS . . . 7 C. W. N., 825

——of lunatic's estate—

See LUNATIC . I. L. R., 30 Calc., 973

MAPS.

See EVIDENCE—CIVIL CASES—MAPS

MARITIME LIEN.

See ADMIRALTY OR VICE-ADMIRALTY JURISDICTION I. L. R., 22 Calc., 402

MARKET RATE.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

MARRIAGE.

See BIGAMY.

See HINDU LAW—

MARRIAGE;

WIDOW—DISQUALIFICATIONS—RE-MARRIAGE.

See MAHOMEDAN LAW—MARRIAGE.

——agreements or contracts concerning—

See CONTRACT ACT, S 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY [I. L. R., 23 All., 495

See HINDU LAW—HUSBAND AND WIFE [I. L. R., 28 Calc., 751

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—BREACH OF PROMISE OF MARRIAGE [I. L. R., 24 Mad., 652

——dissolution of—

See COSTS—SPECIAL CASES—DIVORCE [I. L. R., 28 Calc., 84

See DIVORCE ACT.

——proof of—

See RESTITUTION OF CONJUGAL RIGHTS [I. L. R., 28 Calc., 37

——validity of—

See ADULTERY . 7 C. W. N., 143

MARRIED WOMAN.

See ADULTERY . I. L. R., 30 Calc., 910

See MINOR—REPRESENTATION OF MINORS IN SUITS . I. L. R., 23 All., 459

——enticing away—

See ADULTERY . . 7 C. W. N., 143

MASTER AND SERVANT.

See PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890), s. 3. [I. L. R., 26 Bom., 609

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL . I. L. R., 30 Calc., 207

See SERVANT.

——liability of servant—

See BENGAL EXCISE ACT (VII OF 1878), s 53 . . I. L. R., 29 Calc., 496

—*Theft and forgery by servants, no duty to guard against.*—There is no duty incumbent upon mercantile men, any more than upon other people, to anticipate and to take precautions against the possibility of a theft of letters or of forgery being committed. *Societe Generale* v. *Metropolitan Bank (1873), 27 L. T., 849,* referred to MORRISON v. VERSCHOYLE (1901) . . 6 C. W. N., 429

MATERIAL ERROR.

See ERROR . I. L. R., 29 Calc., 481

MAXIMS.

——actio personalis moritur cum persona—

See ABATEMENT OF SUIT—APPEALS [I. L. R., 26 Bom., 597

See MALICIOUS PROSECUTION [I. L. R., 26 Mad., 499

——communis error facit jus—

See OUDH ESTATES ACT (I OF 1869) [5 C. W. N., 602

——cujus est solum ejus est usque ad cœlum—

See INJUNCTION—SPECIAL CASES—CUTTING TREES . I. L. R., 24 All., 499

——ignorantia legis neminem excusat—

See EMBANKMENT . 7 C. W. N., 286

——qui facit per alium facit per se—

See SIGNATURE . I. L. R., 24 All., 319

MEASUREMENT OF LANDS.

See BENGAL TENANCY ACT, ss. 90, 52 AND 188 . . . 7 C. W. N., 93

MEDICAL EVIDENCE.

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE.

MERCHANDISE MARKS ACT (IV OF 1889).

——ss. 4, 6—

See TRADE MARK. [I. L. R., 26 Bom., 289

MERGER.

See LANDLORD AND TENANT—TRANSFER BY LANDLORD . I. L. R., 24 All., 487

See PATNI TENURE. [I. L. R., 28 Calc., 744

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859. [I. L. R., 30 Calc., 1071

MESNE PROFITS.

See ATTACHMENT—SUBJECT OF ATTACHMENT—MESNE PROFITS.

See INTEREST—MISCELLANEOUS CASES—MESNE PROFITS.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R., 26 Bom., 312

See ONUS OF PROOF—MESNE PROFITS.

See PARTITION—MISCELLANEOUS CASES. [6 C. W. N., 698

See RES JUDICATA—MATTERS IN ISSUE [I. L. R., 25 Bom., 115

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MESNE PROFITS.

——suit for—

See BENGAL TENANCY ACT, ss. 101 TO 111A . . I. L. R., 28 Calc., 28

See CIVIL PROCEDURE CODE, s. 501. [6 C. W. N., 710

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—MESNE PROFITS.

See SPECIFIC RELIEF ACT, s 9. [I. L. R., 24 All., 501

1. RIGHT TO, AND LIABILITY FOR.

1.—*Civil Procedure Code, s. 211—Allowance of expenses of collection of rents to a trespasser against whom a decree for mesne profits has been passed—Principle upon which such expenses should be allowed or disallowed.*—In estimating the

trespasser has entered or continued on the property without any *bonâ fide* belief that he is entitled to do so, where, in

thrust himself

claim all ne

revenue or gr

Court, in estimating damages, to allow the wrong-doer even such charges as would ordinarily but voluntarily

2. ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS.

2.—Application for assessment—*Application for determination of mesne profits—Effect of dismissal of such an application—Execution of decree—Practice*—Applications to determine mesne profits are to be treated as applications for execution

been

lecide

ing a

shesh

Moo.

I. A., 544, relied upon. *Puran Chand* v. *Roy Radha Kishen (1891), I. L. R., 19 Calc., 132,* and *Kewal Kishan Singh* v. *Sookhari (1896), I. L. R., 24 Calc., 173,* discussed and distinguished RAM KISHORE GHOSE *v.* GOPI KANT SHAHA (1900) [I. L. R., 28 Calc.

3.——————*Decree for mesne profits to be subsequently assessed—Application for*

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS—*continued.*

All., 304, referred to. MUHAMMAD UMARJAN KHAN *v.* ZINAT BEGAM (1903) . I. L. R., 25 All., 385

4.—Attachment of property of wrong person—*Damages and mesne profits, suit for*—

property in dispute, which belonged to her, was not released. The defence of defendants Nos 1 and 2 was that they were not liable, whilst defendant No 3 did not enter appearance *Held* that, as the property in suit belonged to the plaintiff, and was attached as the property of defendant No 3, who did not appear within the time specified in the proclamation,

defendants No 2 were also liable for damages, as they, private prosecutors, through legal and other agents, caused the attachment to be effected *Soobjan Beebee* v *Shaik Shureentoollah (1869), 12 W. R., 329*, referred to. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* JAGAT MOHINI DASSI (1901)
[I. L. R., 28 Calc., 540; s.c, 6 C. W. N., 75

5.—Principle of assessment—*Possession*—

mesne profits in such cases will depend upon the character of the possession held by the decree-holder before ouster *Raghu Nandan Jha* v. *Jalpa Pattap*

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS—*continued.*

(1897), 3 C. W. N., 743, distinguished. SURJA PERSHAD NARAIN SINGH *v.* REID (1902)
[I. L. R., 29 Calc., 622; s.c., 6 C. W. N., 409

6.—Profits not awarded by decree—*Execution of decree—Jurisdiction—Civil Procedure Code, ss. 211, 244*—An order passed in execution, giving to the plaintiff mesne profits not awarded by the decree, is without jurisdiction. *Kalka Singh* v.

7.—Reversal of decree—*Civil Procedure Code, s. 583—Decree reversed on appeal, after possession obtained thereunder—Application for possession and mesne profits—Disallowance of application—Separate suit for mesne profits*—*S N* obtained a decree for foreclosure on a mortgage against *R R*. Against this decree *R R* appealed to the High Court; but, pending the appeal, *S N*

paid up the amount found by the decree of the High Court to be due by him. He then applied to the

SAHAI *v.* RAM RATAN LAL (1902)
[I. L. R., 24 All., 361

8.—Set-off of expenditure by Hindu widow—*Hindu law—Hindu widow—Widow in possession of deceased husband's property ousted by adopted son—Maintenance—Set-off—Sums expended on funeral ceremonies of late owner.*—A Hindu widow, who had been for some years in possession of the immovable property of her deceased husband, was ousted by a claimant who proved his title as adopted son of the said deceased husband, and a decree for mesne profits was given against the widow. *Held*, on appeal in execution of the decree for mesne profits, (*1*) that, in absence of evidence of negligence, the decree-holder was entitled only

MESNE PROFITS *continued.*

2. ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS—*concluded.*

maintenance, and what sum should be allowed in respect of the funeral ceremonies under the circumstances, considered. *Sreemutty Nittokissoree Dossee* v. *Jogendro Nauth Mullick (1878), L. R., 5 I. A., 55,* referred to. DALEL KUNWAR *v.* AMBIKA PARTAP SINGH (1903) . . . I. L. R., 25 All., 266

3. MODE OF ASSESSMENT AND CALCULATION.

9.—Plaintiff both landlord and tenant combined—*Mesne profits, assessment of—Landlord and tenant, combined position of—Costs.*—Where the position of the plaintiff is that of landlord

possession from the plaintiff, the mesne profits must be assessed on the value of the crops raised by the

[I. L. R., 30 Calc., 536

10.—Raiyati land—*Civil Procedure Code (Act XIV of 1882), s. 211—Decree for possession of zerait land*—When land is *raiyati*, and both the true owner and the trespasser are, under ordinary circumstances, merely rent-receivers, assessment of mesne profits should be made on the basis of fair and reasonable rent *Ranee Asmed Kooer* v. *Maharanee Indurjeet Kooer (1868), 9 W. R.*

assessment of mesne profits, between *raiyati* land held by a *raiyat* and the proprietor's private land ordinarily cultivated by him, except as to the cost of cultivation. So, where a *zamindar* obtained a decree

raised on the land, less the expenses for cultivation. *Mussamut Rookumee Kooer* v. *Ramtuhul Roy*

11.—Trespasser—*Civil Procedure Code, s. 211—Execution of decree—Allowance of collection expenses to a trespasser against whom a decree for mesne profits has been passed.*—Ordinarily, in the case of a decree for mesne profits against a trespasser in possession of immovable property, the collection expenses incurred by him during the period of

MESNE PROFITS—*concluded.*

3. MODE OF ASSESSMENT AND CALCULATION—*concluded.*

his possession will be allowed; it is only when the trespass is

Court, in

such expen

L. R., A

Chowdhra

(1881), I

v. *Shoshi*

A., 124;

1 All., 518; Sharf-ud-din Khan v. *Fatehyab Khan (1897), I. L. R., 20 All., 208,* and *Shitab Dei* v. *Ajudhia Prasad (1887), I. L. R., 10 All., 13,* referred to. ABDUL GHAFUR *v.* RAJA RAM (1901) [I. L. R., 23 All., 252

MIGRATING FAMILY.

See HINDU LAW—INHERITANCE—MIGRATING FAMILIES.

MILITARY OFFICER.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY. [I. L. R., 25 Mad., 402

MINOR.

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION [I. L. R., 24 Mad., 326
" 27 Bom., 287

See COMPROMISE—

CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE; [I. L. R., 30 Calc., 613

COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE. [I. L. R., 28 Bom., 109
7 C. W. N., 90

See DECLARATORY DECREE, SUIT FOR—ADOPTION . I. L. R., 30 Calc., 613

See GUARDIAN.

See GUARDIANS AND WARDS ACT (VIII OF 1890).

See HINDU LAW—

ALIENATION—

ALIENATION BY MOTHER;

ALIENATION BY FATHER;

MINOR—*continued.*

See HINDU LAW—*concluded.*

ALIENATION—*concluded.*

ALIENATION BY WIDOW—ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS; [6 C. W. N., 905

GUARDIAN.

See LIMITATION ACT, 1877. [I. L. R., 28 Calc., 465

See LIMITATION ACT, 1877—

s. 7; . I. L. R., 28 Calc., 465
" 29 Calc., 813

s. 7 AND SCH II, ART 11; [I L. R., 26 Bom., 730

ss. 7 AND 8 AND SCH. II, ART 106; [I. L. R., 25 Mad., 26

ss. 7 AND 8 AND SCH II, ART. 179; [I. L. R., 25 Mad., 431

s 8 . 6 C. W. N., 348
[I. L. R., 25 All., 155

See MAHOMEDAN LAW—GUARDIAN

See PARTIES—PARTIES TO SUITS—JOINT FAMILY. . I. L. R., 25 All., 378

——agreement on behalf of—

See HINDU LAW—PARTITION—

REQUISITES FOR PARTITION; [I. L. R., 30 Calc., 738

EFFECT OF PARTITION [I. L. R., 30 Calc., 725

——adoption of—

See HINDU LAW—ADOPTION.

——liability of, on contract—

See ESTOPPEL—ESTOPPEL BY CONDUCT. [I. L. R., 30 Calc., 539

See HINDU LAW—CONTRACT—PROMISSORY NOTE . I. L. R., 26 Mad., 330

——minority of wife—

See RESTITUTION OF CONJUGAL RIGHTS [I. L. R., 28 Calc., 37

——non-appearance of guardian in suit—

See CIVIL PROCEDURE CODE, s 108. [5 C. W. N., 58

——payment of interest on behalf of—

See LIMITATION ACT, 1877, s. 20. [I. L. R., 29 Calc., 647

——representation of minor in suits—

See CIVIL PROCEDURE CODE, s 108. [I. L. R., 24 All., 383

See PRACTICE—CIVIL CASES—NEXT FRIEND . I. L. R., 28 Calc., 264

MINOR—*continued.*

——right of, to raise objection on attaining majority—

See LIMITATION—QUESTION OF LIMITATION . . . 6 C. W. N., 348

——suit by—

See ESTOPPEL—ESTOPPEL BY CONDUCT [I. L. R., 29 Calc., 126

1. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.

1.—Mortgage—*Guardian and minor—Act VIII of 1890 (Guardians and Wards Act), ss. 29, 30—Mortgage executed by a minor—Distinction between such mortgage and a mortgage executed by the certificated guardian on behalf of the minor—Act XIX of 1873 (North-Western Provinces Land-revenue Act), ss. 203, 205B.*—A

MADAN MOHAN *v.* RANGI LAL (1901) [I. L. R., 23 All, 288

2. ———— *Act VIII of 1890 (Guardians and Wards Act), ss. 29 and 30—Guardian and minor—Mortgage by guardian of minor's property—Previous permission of the*

TEJPAL *v.* GANGA (1902) . I. L. R., [illegible] All., [illegible]

2 CUSTODY OF MINORS.

3.—*Suit to recover custody of—Suit by a father for the recovery of his children illegally detained—Tort—Death of defendant pending suit—Survival of cause of action against defendant's heirs—Practice—Procedure.*—A Civil Court has jurisdiction to entertain a suit by a father to recover possession

MINOR—*continued.*

2. CUSTODY OF MINORS—*concluded.*

of his minor children illegally detained by a stranger. Such a suit is not barred by the provisions of the Guardians and Wards Act (VIII of 1890) A ... of his minor ... en illegally ... Pending the ... continued ... and legal representative, on the ground that the minors were in her possession. *Held* that the cause of action did not survive as against the widow of the deceased defendant, and that therefore the suit could not proceed The cause of action which gave rise to the suit was extinguished when the defendant Mukimbhai died SHARIFA *v.* MUNEKHAN (1901)

I. L. R., 25 Bom., 574

3. REPRESENTATION OF MINOR IN SUITS.

4.—*Setting aside a decree—Representative of* ... *Agreement to refer to arbitration—Guar-* ...

1899, directing the minor to pay to the defendants a sum of R950, and a decree was passed in terms of the award In the following year, the minor, by his next friend, brought this suit to set aside the decree, on the grounds (*a*) that the minor had not been properly represented, and (*b*) that leave of the Court under s. 462 of the Civil Procedure Code (XIV of 1882) had not been obtained The lower Courts allowed the plaintiff's claim, and set aside the decree. On appeal by the defendants *Held* (reversing the decree of the lower Courts, and remanding the case for hearing on the merits) (*1*) that there was nothing on the record to show that the ...

5.—*Hindu Law—Joint Hindu family—Suit by sons to obtain exemption of their shares from sale under a decree on a mortgage—Plaintiffs parties to the suit in which the decree was passed, but minors, and not properly represented—Guardian and minor—Res judicata—Civil Procedure Code, s. 457.*—A suit was brought by the ... to enforce a ... mortgage of ancestral ...

MINOR—*continued.*

3. REPRESENTATION OF MINOR IN SUITS—*continued.*

suit terminated in an *ex parte* decree for sale against all the defendants. The minors thereupon sued to obtain a declaration that the decree for sale did not affect their interests in the joint family property, inasmuch as they had not been properly represented in the suit in which it was passed, their mother being, as a married woman, incapable in law of acting as their guardian No question of fraud was shown to arise in the case *Held* that the minors, on the facts stated above, were entitled to the decree asked for. *Durga Persad* v. *Kesho Persad Singh (1882), I. L. R, 8 Calc, 656; Mungniram Marwari* v. *Mohunt Gursahai Nund (1889), L. R, 16 I A., 195; Vishnu Keshav* v. *Ramchandra Bhaskar (1886), I L. R, 11 Bom., 130; Daji Himat* v. *Dhirajram Sadaram (1887), I. L. R., 12 Bom, 18; Nawab Mahomed Nooroollah Khan* v. *Harcharan Rai (1874), 6 N.-W. P. H. C. Rep, 198; Daulat Singh* v. *Raghubir Singh, Weekly Notes, 1894, p. 141*; and *Raghubar Dayal Sahu* v. *Bhikya Lal Misser (1885), I. L. R, 12 Calc, 69,* referred to. SHAM LAL *v.* GHASITA (1901)

I. L. R., 23 All., 459

6.—*Suit on behalf of minor by next friend—Gross negligence of next friend—Review—Right of minor to have suit restored—Minor consenting party to petition for withdrawal—Civil Procedure Code (Act XIV of 1882), s. 462.*—When the next friend of a minor plaintiff withdraws from the suit, it is open to the minor, through another next friend, to have the suit re-opened on review, on the ground that the former next friend, though guilty of no fraudulent conduct, was grossly negligent of the minor's interest in withdrawing from the suit RAM SARUP LAL *v.* SHAH LATAFAT HOSSEIN (1902)

I. L. R., 29 Calc., 735

7.—*Guardian—Guardian ad litem—Civil Procedure Code (Act XIV of 1882), ss. 443, 578—Absence of formal order appointing guardian—Sanction of appointment by Court—Irregularity—Service of summons on minors, defect in—Substantial ... of minors in suit.*—Under s. 443 ... the ... t of ... half ... rule ... t, by ... e of ... rmal

a person as such a guardian, the absence of a ... order of appointment is not necessarily fatal to the proceedings. The mother of certain minor defendants appeared throughout the proceedings in a suit as their guardian: the Court admitted the plaint in which she was described as guardian, and in the decree and execution proceedings the Court so described her: *Held* that, although no formal order appointing her guardian *ad litem* was drawn up, the minors were effectively represented in the suit by their mother, and with the sanction of the Court. The absence of a formal order appointing the mother guardian *ad litem,* and the fact that no attempt was made to serve the minors (members of a joint family)

MINOR—*concluded.*

3. REPRESENTATION OF MINOR IN SUITS —*concluded*

or their mother personally with a summons, before serving it on the only adult male member and the manager of the joint family, were held, under the circumstances, there being nothing to suggest that the interests of the minors were not duly protected, and the defects in procedure not having prejudiced them, to be merely irregularities under s 578 of the

MISAPPROPRIATION OF PROPERTY.

See Company—Winding up—Liability of Directors and Officers [I. L. R., 29 Calc., 688

See Criminal Misappropriation.

MISCHIEF.

See Landmarks.

[I. L. R., 30 Calc., 1084

1.—Bonâ fide claim of right—*Indian Penal Code (Act XLV of 1860), s 426—Practice—Rule—Magistrate, if can add to or supplement his judgment, in showing cause*—Where the accused was convicted of the offence of mischief, s 426, Indian Penal Code. *Held* that the conviction was bad, inasmuch as the accused acted in the exercise of a

2.—Caste—*Act XLV of 1860 (Indian Penal*

members of the caste came, and, after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated. The persons who threw the shoe were convicted of mischief, on the ground that their action had polluted the food, and had, from a Hindu religious point of view, rendered it unfit

3.—Cutting channel—*Indian Penal Code (Act XLV of 1860), ss. 426, 143—Riot—Cutting a*

MISCHIEF—*concluded.*

channel across one's own lands into a jhil in possession of another—Defect in charge—Prejudice—The accused, who were servants of *S*, were convicted by a Magistrate, under ss 426 and 143 of the Penal Code, for having cut a channel from a *jhil* which was in the possession of *B*, and by so doing let out

ground. Shoshi Bhushan Bose *v* Gobind Chandra Roy (1903) . . . 7 C. W. N., 663

of the offence of mischief under s 426, Indian Penal Code, for cutting paddy which the Court found to belong to the complainant, when it was not found that the paddy was not in a fit state to be cut. In the matter of Miras Chaukidar (1903) [7 C. W. N., 713

5.—Intention—*Indian Penal Code, ss. 403, 426—Criminal misappropriation of property—Dishonest intention—Deterioration of the value of mortgaged property*—When the reversioner of

Banerjee *v.* Tansuk Roy Seraogi (1901) [6 C. W. N., 34

MISCONDUCT.

—of arbitrator—

See Arbitration—Awards—Validity of Awards, and Ground for setting them aside.

MISDESCRIPTION.

—of property, effect of—

See Practice—Civil Cases—Sale by Registrar . I. L. R., 29 Calc., 420

See Sale in Execution of Decree—Errors in Description of Property sold.

MISDIRECTION.

See Charge to Jury—Summing up in General Cases; [I. L. R., 27 Bom., 644

MISDIRECTION—*concluded.*

See CHARGE TO JURY—*concluded.*
MISDIRECTION;

SPECIAL CASE—STOLEN PROPERTY.
[I. L. R., 26 Mad., 467

See CONFESSION—CONFESSIONS TO MAGISTRATE . . I. L. R., 26 Mad., 38

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.

MISJOINDER.

——of causes of action—

See DEBTOR AND CREDITOR
[I. L. R., 26 Bom., 577

See JOINDER OF CAUSES OF ACTION.

——of causes of action and parties—

See APPEAL—ORDERS—ORDER REJECTING A PLAINT . . 6 C. W. N., 585

See MULTIFARIOUSNESS
[I. L. R., 29 Calc., 257

——of charges—

See JOINDER OF CHARGES

——of parties—

See CRIMINAL PROCEEDINGS
[I. L. R., 28 Calc., 104

1.—Misjoinder of parties—*Practice—Procedure—Parties—Cause of action—Civil Procedure Code (Act XIV of 1882), ss. 26, 28, 578—Misjoinder of causes of action—Assault by two persons on the same occasion on two other persons—Joint plaintiffs—Joint defendants.*—Plaintiffs 1 and 2 (father and son) were assaulted by defendants 1 and 2 at an interview in the house of the defendants Defendant 1 struck the first plaintiff, and the second defendant struck the second plaintiff. The plaintiffs thereupon jointly filed this suit against both the defendants to recover damages for assault. The defendants objected that the suit was bad for misjoinder of parties and causes of action. The lower Courts disallowed the objection, and awarded the plaintiff's claim. On appeal by the defendants: *Held* that the plaintiffs could not join in one suit for damages They had not the same cause of action, and therefore s 26 of the Civil Procedure Code (XIV of 1882) did not permit them to be joined. *Held also* that, although the defendants had not really been prejudiced by the misjoinder, it was impossible to hold that the case fell within s. 578 of the Civil Procedure Code (XIV of 1882). That section only applies to mistakes and irregularities subsequently committed in a suit which has been instituted in such a way as to give the Court jurisdiction to try it The suit must first be instituted in the manner allowed by law. But the law, as it stands at present, does not authorize a suit, which is really two separate suits in which separate plaintiffs are concerned, to be instituted, nor does it give the Court jurisdiction to entertain a suit thus instituted *Held, also,* that

MISJOINDER—*concluded.*

the defendants could be sued together under s 28 of the Civil Procedure Code (XIV of 1882), as they were acting in concert. If two persons combine to attack a third person, the latter can join them as defendants in a suit for damages YARAJLAL BHAISHANKER *v* RAMDAT HARIKRISHNA (1901)
[I. L. R., 26 Bom., 259

2. ——— *Civil Procedure Code, s. 31—Misjoinder of defendants and causes of action—Suit by transferee from heir of deceased Mahomedan against another heir and transferees from such other heir.*—A plaintiff came into Court, claiming a [illegible]
Mahomed [illegible]
separate [illegible]
property [illegible]
that the [illegible]
another of the heirs of the deceased, who was in possession of some of it, and by certain transferees of other portions from the said heir. Both the remaining heir and the transferees from him were made defendants. *Held* that there was no misjoinder of parties or causes of action in such a suit. *Indar Kuar* v. *Gur Prasad (1886), I. L. R., 11 All, 33,* followed MAZHAR ALI KHAN *v* SAJJAD HUSAIN KHAN (1902) . I. L. R., 24 All., 358

3. ——— *Civil Procedure Code (Act XIV of 1882), s. 26—Joinder of plaintiffs—Right claimed in the alternative.*—The widow and the adopted son of a deceased person joined, as plaintiffs, in a suit to recover money payable by the defendants to the deceased The money was undoubtedly due to one or other of them, and they were agreed that [illegible]

[illegible] followed. *Lingammal* v. *Chinna Venkatammal, I. L R, 6 Mad, 239,* explained. PINAPATI MRUTYUNJAYA *v* PINAPATI JANAKAMMA (F B., 1903) . . . . I. L. R., 26 Mad., 647

MISTAKE.

——money paid by—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.
[I. L. R., 25 All., 527

——of calculation—

See CIVIL PROCEDURE CODE, S 244—QUESTIONS IN EXECUTION OF DECREE
[6 C. W. N., 627

——of fact—

See PLAINT—AMENDMENT OF PLAINT.
[I. L. R., 30 Calc., 699

——of law—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES . . L. R., 30 I. A., 20

MISTAKE—*concluded.*

——probate granted by—

See PROBATE—TO WHOM GRANTED. [6 C. W. N., 787

——rent paid by—

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT [I. L. R., 26 Bom., 410

MOFUSSIL COURTS.

——suit to set aside decree of, on ground of fraud—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL. [I. L. R., 30 Calc., 389

MOHUNT.

See HINDU LAW—
ENDOWMENT;
INHERITANCE—RELIGIOUS PERSONS [7 C. W. N., 145

MOHURBHUNJ.

See TRIBUTARY MAHALS OF ORISSA

MOKURARI ISTEMRARI TENURE.

See GRANT—CONSTRUCTION OF GRANTS. [I. L. R., 30 Calc., 20

MOKURARI LEASE.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859 [I. L. R., 30 Calc., 1071

MONEY-DECREE.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES [I. L. R., 27 Bom., 556
6 C. W. N., 5

See BENGAL TENANCY ACT, s 188. [6 C. W. N., 124

See EXECUTION OF DECREE—EXECUTION AGAINST REPRESENTATIVES [I. L. R., 30 Calc., 961

See REGISTRATION ACT (III OF 1877), s. 28 . I. L. R., 29 Calc, 654

See TRANSFER OF PROPERTY ACT, s. 99. [I. L. R., 30 Calc., 463

MONEY HAD AND RECEIVED.

See LIMITATION ACT, SCH. II, ARTS. 62 AND 97.

MONEY HAD AND RECEIVED—*concluded.*

—*Contract Act (IX of 1872), s. 72—Right to recover money had and received to plaintiff's use, unaffected by s. 72.*—Defendant had sought to exercise, as against plaintiff, the special powers conferred upon landholders by s 38 of the Rent Recovery Act In fact, the relations between defendant and plaintiff were not such as entitled defendant to exercise those powers. Plaintiff, in order to avert the injury which he would have sustained if his interest in the land had been sold, paid the

I. L. R., 15 Calc, 656, approved. NARAYANASAMI REDDI *v.* OSURU REDDI (1901) [I. L. R., 25 Mad., 548

MONEY LENT.

See LIMITATION ACT, 1877, SCH. II, ART. 57 . . I. L R., 24 All., 251

——partner cannot sue firm for—

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS. [I. L. R., 25 Bom., 606

MONEY-ORDER.

See POSTAL MONEY-ORDER.

MONEY PAID.

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

——to prevent sale—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

MONEY PAYABLE BY INSTALMENTS.

See INSTALMENTS.

MOOKTEAR.

See PLEADER—AUTHORITY OF, TO BIND CLIENT . . 7 C. W. N., 351

1.—Dismissal of—*Statutes, interpretation of—Legal Practitioners' Act (XVIII of 1879, as amended by Act XI of 1896), ss. 12, 13, cl. (f), 14, 36—"Any other reasonable cause," meaning of—Ejusdem generis—Professional misconduct—Offence committed prior to admission as legal prac-*

MOOKTEAR—*concluded.*

titioner—Rules—Act XX of 1865, s. 15—Letters Patent, s. 10.—Held by the Full Bench (GHOSE, J., dissenting) (1) that the words "any other reasonable cause," in s. 13, cl. (*f*), of the Legal Practitioners' Act, are not confined to misconduct of which a practitioner is guilty in his professional capacity, but embrace all causes which may afford reasonable ground for his suspension or dismissal; and (2) that a legal pactitioner who, prior to his admission, committed an offence which, if committed after his admission, would render him amenable to the provisions of s. 13 of the Legal Practitioners' Act, can be dealt with by the Court under that section. *In the matter*

2.—Permission to appear—*Criminal Procedure Code (Act V of 1898), s. 4 (r)—Permission to appear—Power of Magistrate to withhold.*—Where a Magistrate refused permission to a *mooktear* to appear in two cases, and also passed a general order refusing permission to appear in any case before him, owing to the latter's alleged misconduct ... hat such orders ... ven in punish- ... misconduct, the ... matter on its ... opportunity of ... OF TARENDRA NATH CHATTERJEE (1902) . 7 C. W. N., 524

... the *mooktear* receives from the person for whom he stands surety is not a fee for professional services. It is the duty of the officer who accepts a surety bond from a *mooktear* to see whether the *mooktear* is a man of substance; and, when a *mooktear* entered ... of no pro- ... professional ... had stood as ... y when the same was declared forfeited, alleging that he had discharged his obligation, and, when a certificate was issued against him, he contended that the certificate was illegal; when, later, a distress warrant was issued, he was not to be found for some little time, and the warrant was returned unexecuted because no movable property belonging to him was found. *Held* that these acts of the *mooktear* did not amount to professional misconduct. IN THE MATTER OF MANGOBIND MITTER (1902) . 7 C. W. N., 281

MOOKTEARNAMA.

——admission in—

See LIMITATION—QUESTION OF LIMITATION . . I. L. R., 29 Calc., 664

——non-production of—

See PARDANASHIN WOMEN—EXECUTION OF DOCUMENT BY. [I. L. R., 29 Calc., 749

MOOKTEARSHIP EXAMINATION.

See BOARD OF EXAMINERS. [I. L. R., 28 Calc., 479

MORTGAGE.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS. [I. L. R., 26 Bom., 305

See CERTIFICATE OF ADMINISTRATION—ACT VII OF 1889 [I. L. R., 28 Calc., 246

See CIVIL PROCEDURE CODE, s. 244—

QUESTIONS IN EXECUTION OF DECREE; . 7 C. W. N., 54

PARTIES TO SUIT. 7 C. W. N., 54

See CONSIDERATION. I. L. R., 25 All., 159

See COSTS—SPECIAL CASES—MORTGAGE.

See DECLARATORY DECREE, SUIT FOR—MISCELLANEOUS SUITS. [I. L. R., 24 All., 170

MORTGAGE—*continued*

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE

See DEED—

EXECUTION; . 5 C. W. N., 454

ATTESTATION. [I. L. R., 27 Bom., 91
7 C. W. N., 384

See EVIDENCE—CIVIL CASES—DECREE—DECREE NOT INTER PARTES [7 C. W. N., 54

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE

See HINDU LAW—

ALIENATION—

ALIENATION BY FATHER;

ALIENATION BY WIDOW—SETTING ASIDE ALIENATIONS, AND WASTE; [5 C. W. N., 445

GUARDIAN; I. L. R., 26 Bom., 433

JOINT FAMILY — POWERS OF ALIENATION BY MEMBERS—MANAGER; I. L. R., 25 All., 407

PARTITION—EFFECT OF PARTITION; [I. L. R., 24 All., 483

USURY.

See INTEREST—

MISCELLANEOUS CASES—MORTGAGE;

WHERE NO STIPULATION, OR STIPULATED TIME HAS EXPIRED;

STIPULATIONS AMOUNTING OR NOT TO PENALTIES [I. L. R., 29 Calc., 43

See LIMITATION ACT, 1877—

s. 19—ACKNOWLEDGMENT OF DEBTS; [I. L. R., 25 Mad., 220

SCH. II—

ART. 10; I. L. R., 24 All., 17

ART. 132; 5 C. W. N., 356

ART. 134;

ART. 144—ADVERSE POSSESSION; [I. L. R., 27 Bom., 43

ART. 147;

ART. 148;

ART. 179—LAW APPLICABLE TO APPLICATION FOR EXECUTION. [I. L. R., 30 Calc., 751

See MAHOMEDAN LAW—PRE-EMPTION. [I. L. R., 24 All., 119

See MALABAR LAW—MORTGAGE.

See ONUS OF PROOF—MORTGAGE.

MORTGAGE—*continued.*

See PARDANASHIN WOMEN. [I. L. R., 26 Calc., 546

See PARTIES—PARTIES TO SUITS—

JOINT FAMILY; [I. L. R., 28 Calc., 517
„ 24 All., 459
„ 25 All., 162

MORTGAGES, SUITS CONCERNING.

See POSSESSION—SUITS FOR POSSESSION. [7 C. W. N., 607

See PROBATE—TO WHOM GRANTED. [6 C. W. N., 767

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880), ss 2, ETC. [I. L. R., 29 Calc., 537

See REGISTRATION ACT (III OF 1877)—

s. 28; . I. L. R., 29 Calc., 654

s. 50.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM [I. L. R., 24 Mad., 96

See RES JUDICATA—MATTERS IN ISSUE. [I. L. R., 26 Bom., 661

See SALE FOR ARREARS OF RENT—

INCUMBRANCES, 6 C. W. N., 834

SETTING ASIDE SALE—GENERAL CASES . I. L. R., 29 Calc., 1

See SIGNATURE . I. L. R., 24 All., 319

See SMALL CAUSE COURT—PRESIDENCY TOWNS — JURISDICTION — IMMOVABLE PROPERTY . I. L. R., 26 Bom., 82

See STAMP ACT (II OF 1899), SCH. I, ARTS. 32 AND 40 [I. L. R., 25 Bom., 370

See TITLE—MISCELLANEOUS CASES. [I. L. R., 25 Mad., 507

See TRANSFER OF PROPERTY ACT—

s. 3—"NOTICE;" [7 C. W. N., 11

s. 65; [I. L. R., 26 Mad., 385

s. 74; [I. L. R., 26 Mad., 537

s. 82; [I. L. R., 24 Mad., 85, 96
„ 6 C. W. N., 583

s. 83; [I. L. R., 24 All., 461
„ 25 All., 179

s. 88 AND 89; [I. L. R., 25 Mad., 244

s. 89; [I. L. R., 29 Calc., 651

MORTGAGE—*continued.*

See TRANSFER OF PROPERTY ACT—*concluded.*

s. 90; [7 C. W. N., 744
I. L. R., 25 All., 79

s. 93; [I. L. R., 23 All., 88

s. 99; [I. L. R., 30 Calc., 463

s. 100; [I. L. R., 24 Mad., 397

——alteration of bond—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.
[I. L. R., 25 All., 580

——by guardian—

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.
[I. L. R., 25 All., 59

——by landlord to tenant—

See LANDLORD AND TENANT—TRANSFER BY LANDLORD . I. L. R., 24 All., 487

——by minor—

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[I. L. R., 30 Calc., 539

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.
[I. L. R., 23 All., 288

——evidence of—

See VENDOR AND PURCHASER—MISCELLANEOUS CASES . . 6 C. W. N., 192

——form of mortgage—

See EVIDENCE—PAROL EVIDENCE.
[I. L. R., 28 Calc., 256, 289

——inclusion in, of amount of decree—

See CIVIL PROCEDURE CODE, s. 257A.
[I. L. R., 25 Bom., 252

——marshalling—

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
[I. L. R., 29 Calc., 25

——possession under mortgage—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . 6 C. W. N., 601

——proof of execution of—

See EVIDENCE ACT, s. 68 . 6 C. W. N., 395

——property sold subject to—

See SALE IN EXECUTION OF DECREE—

MORTGAGED PROPERTY;

DISTRIBUTION OF SALE-PROCEEDS;
[5 C. W. N., 649

MORTGAGE—*continued.*

——property sold subject to—*concluded.*

See SALE IN EXECUTION OF DECREE—*concluded.*

SETTING ASIDE SALE—GENERAL CASES;
[I. L. R., 25 Mad., 244

IRREGULARITY.
[I. L. R., 30 Calc., 142

——redemption of—

See MORTGAGE—

CONSTRUCTION—USUFRUCTUARY MORTGAGE.
[L. R., 29 I. A., 148

SALE OF MORTGAGED PROPERTY—PURCHASERS.
[5 C. W. N., 232

See REGISTRATION ACT (III OF 1877), s. 17, CLS. (*b*) AND (*h*).
[I. L. R., 30 Calc., 1016

——sanction of Court—

See CIVIL PROCEDURE CODE, s. 257A.
[I. L. R., 27 Bom., 96

——simple—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.
[5 C. W. N., 63

——suit to enforce—

See RECEIVER . 7 C. W. N., 452

1. FORM OF MORTGAGES.

1.—Anomalous mortgage—*Transfer of Property Act (IV of 1882), ss. 58, cls (b), (d), and 98—Usufructuary mortgage—Simple mortgage—Suit by mortgagees for recovery of debt and, in default of payment by mortgagors, for foreclosure and possession.*—A mortgage-deed (1) put the mortgagees in possession of the mortgaged property, and [illegible]

[illegible] pay the mortgage-money, and an implied agreement [illegible]

[illegible] default of payment by the mortgagors, for foreclosure and possession. *Held* that, owing to the proviso (1), the mortgage was usufructuary, within the meaning of cl. (*d*) of s. 58 of the Transfer of Property Act (IV of 1882), and, owing to the proviso (2), it was a simple mortgage under cl. (*b*) of that section. The transaction was therefore an anomalous mortgage provided for by s 98 of the Act, being a combination

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

of a simple mortgage and an usufructuary mortgage. *In such a case the rights and liabilities of the parties* must be determined by the contract, as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage. *Held, further,* that, though the plaintiffs were not entitled to regain possession, they having let out the property to the mortgagors for a term, still that circumstance did not affect the distinct and independent right of the plaintiffs to sue for the mortgage-money and to obtain a decree for sale of the mortgaged property. AMARCHAND LAKHMAJI *v.* KILA MORAR (1903)

[I. L. R., 27 Bom., 600

2.—Covenant to pay produce of land—*Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 22—"Specifically mortgaged"—Transfer of Property Act (IV of 1882), s. 58*—Bhiku, an agriculturist (father of defendants 3 to 5), borrowed in 1866 a sum of money from the plaintiff's mother, Yesubai, under a bond, whereby he mortgaged his house as security, and also covenanted to pay each year to Yesubai half the produce of certain land as interest

BAISHET *v.* DHONDO RAMKRISHNA (1901)

[I. L. R., 26 Bom., 33

3.—English mortgage—*Transfer of Property Act (IV of 1882), s 58 (e)—Covenant for reconveyance not limited to time stipulated for repayment*

that the mortgagors "hereby mortgage and assign to the mortgagee" the mortgaged property. *Semble*

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*concluded.*

RAMANA AYYAR (F.B., 1902)

[I. L. R., 25 Mad., 220

2. CONSTRUCTION.

lessors, within thirty days of being required so to do Default having been made, the mortgagees sued

mortgage, with an express covenant to pay the principal and interest in instalments, and conferring a

usufruct; and the express covenant to pay precluded the mortgage from being taken as a purely usufructuary mortgage as defined by the Transfer of Property Act. *Held, further,* that the "Damdupat Rule" is

MORTGAGE—*continued.*

2. CONSTRUCTION—*continued.*

inapplicable to cases of mortgage governed by the Transfer of Property Act. *Ram Kanye* v. *Cally Churn, I. L. R., 21 Calc., 841,* referred to. MADHWA SIDHANTA ONAHINI NIDHI v. VENKATARAMANJULU NAIDU (1903) . . I. L. R., 26 Mad., 662

5.—Ejectment—*Mortgage for a fixed term—Mortgagor's right to eject—Mortgagee's right to damages for breach of contract.*—*Held* that the plaintiffs, who had granted the land in suit to the defendants for a fixed term free of rent in consideration of past and present advances made to them, were entitled to eject at the expiration of the term, notwithstanding that ...

... I. A., 30 I. A., 54: s.c., I. L. R., 25 All., 115; 7 C. W. N., 289

6.—Lease—*Construction of deed—Mortgage or lease—Land transferred for ten years—Profits to go in liquidation of debt—Suit for redemption brought before expiration of term—Transfer of Property Act (IV of 1882), ss. 58, cl. (d), and 98—Dekkhan Agriculturists' Relief Act (XVII of 1879), ss. 2 (z) and 15A.*—By a deed dated the 2nd November, 18... tion of a debt ... culturist) to t... session of cert... the income th... after the exp... land was to ce... deed with possession regarding land." Before the expiration of the ten years, the plaintiff brought this suit for redemption and possession, alleging the transaction to be a mortgage. *Held* that it was a mortgage, and that the plaintiff was entitled to redeem even before the expiration of the mortgage term of ten years. TUKARAM BIN MAIRAL v. RAMCHAND MALUKCHAND (F.B., 1901)

I. L. R., 26 Bom., 252

7.—Right in village not held qua zamindar—*Construction of deed—Mortgage qua zamindar—Right of mortgagor in village not held qua zamindar—Absence of express provision in deed charging such right—...*

... with the zamindar's "entire right and income and the *kattubadis* on enfranchised *inams*." The schedule specified by name the villages constituting the *zamindari*, one of these being the village of *Sabaliya*. The only right, title and interest possessed by the *zamindar* in this village (which was an *inam* village of certain *Payaks*) was to the annual payment by the *inamdars* of a *fixed kattubadi*, and the amount of this *kattubadi* was all that was

MORTGAGE—*continued.*

2. CONSTRUCTION—*continued.*

included in the approximate annual income specified in the schedule. At the date of the mortgage to plaintiff, the *zamindar* also possessed a mortgage right over this village, he being the assignee of a mortgage which had been executed by the *Payaks* (the *inamdars*) in 1874, the assignment having been made to him in 1889. In a suit brought against the *zamindar* in 1898 by plaintiff, on his mortgage, plaintiff contended that the deed ... *zamindar* over that village. *Held* that the *zamindar's* mortgage right over the village *Sabaliya* was not comprised in the mortgage. *Rooke* v. *Lord Kensington, 25 L. J. (Ch.), 795,* referred to. BHIMARAJU CHETTI v. SRI KUNJA BEHARI GAJENDRA DEVU (1901) . . I. L. R., 25 Mad., 42

8.—Usufructuary mortgage—*Mortgagee put into possession—Contemporaneous lease of mort...*

... gage of that date, in consideration of a loan of R1,350, put Bahadur Singh into possession of certain property. He covenanted with the mortgagee to pay him interest at the rate of annas 14 *per cent*, which, after deducting the Government revenue (which the mortgagor undertook to pay, and did pay regularly), left the sum of R141-12 payable annually by the mortgagor to the mortgagee for interest. It was further agreed that the mortgagee should pay himself the interest from the profits of the mortgaged property; and further that, if the amount of the ...

... with interest ...

... of the mortgage, at an annual rental of R141-12, which he promised to pay by two equal half-yearly instalments, the rent, if not paid on fixed dates, to bear interest at the rate of 12 *per cent. per annum*. The *kabuliyat* was drawn up strictly in the form of a lease between a landlord and a tenant, and set forth the remedies available to the lessor under s. 36 of the Rent Act by ejectment in case of failure to pay the stipulated rent. *Held* that, under the circumstances set forth above, the mortgage and the lease were two distinct transactions. A suit on the *kabuliyat* would lie only in a Revenue Court, and the plaintiff was not entitled to recover rent for more than three

MORTGAGE—*continued.*

2. CONSTRUCTION—*concluded.*

years from the date of his suit. *Altaf Ali Khan v. Lalta Prasad (1897), I. L. R., 19 All., 496,* distinguished. CHIMMAN LAL v. BAHADUR SINGH (1901) [I. L. R., 23 All., 338

9. ——— *Rents in lieu of interest—Mortgagee dispossessed of part of mortgaged property—Redemption without payment of interest—Transfer of Property Act, s. 58 (d).*—Where a mortgagor covenanted that "until delivery of possession of the aforesaid villages I shall pay interest at the rate of 2 *per cent.* on the above-mentioned mortgage money," and possession was given at once, the deed being silent as to interest thereafter. *Held* that this was a usufructuary mortgage, under which the mortgagee was entitled to rents in lieu of interest, and that the mortgagor was entitled to redeem on payment of principal without interest. The mortgagee, having been dispossessed of several villages shortly

perty of which he was dispossessed by reason of the mortgagor's failure to secure his possession thereof. PERTAB BAHADUR SINGH v. GIJADHIR BAKSH (1902) . . . . L. R., 29 I. A., 148; [s.c., I. L. R., 24 All., 251; 7 C. W. N., 97

3. POSSESSION UNDER MORTGAGE.

10.—Successive mortgagees—*Right of possession of mortgaged lands as between first and second mortgagee—Suit on mortgage by first mortgagee, second mortgagee not being joined—Decree for sale, and subsequent purchase of the lands by first mortgagee—Possession by first mortgagee—Suit by second mortgagee against first mortgagee, decree for sale, and purchase by second mortgagee—Delivery of possession to second mortgagee—Right*

session of it At the date of the suit, a second

11. ——— *Suit by first mortgagee on mortgage—Failure to join subsequent mortgagee—Decree—Sale in execution of decree—Purchase by first mortgagee of mortgagor's undivided interest in mortgaged property—Subsequent suit for*

MORTGAGE—*continued.*

3. POSSESSION UNDER MORTGAGE—*continued.*

partition and possession—Right of second mortgagee to redeem.—In 1886, two defendants mortgaged certain property to plaintiff In 1891, the same defendants executed a second mortgage over the

12.—Usufructuary mortgage—*Usufructuary mortgage of zamindari and sir—Loss by mortgagor of proprietary rights—Mortgage to take*

having mortgaged by way of usufructuary mortgage his *zamindari*, together with his *sir* land, lost his *zamindari* rights and became an ex-proprietary tenant of the *sir* *Held* that the usufructuary mortgage did not become ineffectual, but took effect as

Moody v.

v. *Howa*

Trumper

v *Nathu*

and *Sukr*

I. L R., 16 *All.*, 395, referred to *Held, also*, that in such a case as above, the mortgagor, ex-proprietary tenant, could not, to the prejudice of the

13. ——— *Suit for redemption on ground that mortgage-money has been paid off by usufruct—Accounts—Whether mortgagee liable for gross rental, as shown in jamabandi, or*

mittee *held* that, under the deed, the mortgagor was entitled to call upon the mortgagee to furnish accounts of receipts and payments; and also *held*

MORTGAGE—*continued.*

3. POSSESSION UNDER MORTGAGE—*concluded.*

(reversing the decision of the High Court) that, on the true construction of the deed, the mortgagee was not responsible for the amount of the gross rental as shown in the rent-roll, but only for such sums as were actually received by him or on his behalf, and for such sums, if any, as might have been received by him but for his own neglect or fault. BANARSI PRASAD *v* RAM NARAIN (1903) [I. L. R., 25 All., 287; s.c., 7 C. W. N., 514

4. POWER OF SALE.

14.—*Term of years fixed for mortgage—Mortgagor mortgaging property over a portion of which he has no right—Mortgagee's right to sell and recover money before the expiration of the period fixed—Transfer of Property Act (IV of 1882), ss 67, 68.*—In 1889 the defendant mortgaged ten fields to the plaintiff, to secure a loan of R2,000. The deed provided that the mortgage-debt was to become payable at the expiration of fifteen years, and that in the meantime interest was to be paid yearly at the rate of 6¼ *per cent. per annum* In 1896 the plaintiff discovered that six of the mortgaged fields were not the property of the defendant, who had therefore no right to mortgage them, and he thereupon demanded further security from the defendant, but was refused. Only two years' interest on the mortgage-debt had been paid by the defendant In 1898 the plaintiff filed this suit, praying for the sale of the four mortgaged fields which did belong to the defendant, and for a personal decree against him *Held* that, as the defendant (the mortgagor) had failed to carry out the terms of

[illegible]

15.—*Transfer of Property Act (IV of 1882), ss 85, 96, 97—Mortgagee holding two mortgages over same property—Suit for sale, based on earlier mortgage alone—Maintainability*—In 1880 *B* executed a simple mortgage over certain lands in favour of *A* In 1886, *B* mortgaged the same lands to *A* with possession. *A* now brought a suit on the earlier mortgage for sale of the mortgaged property subject to the later mortgage. *Held* that the suit could not be maintained. *Sundar Singh* v. *Bholu, I L R, 20 All., 322,* referred to. DORASAMI *v.* VENKATASESHAYYAR (1901) I. L. R., 25 Mad., 108

5. SALE OF MORTGAGED PROPERTY.

(a) RIGHTS OF MORTGAGEES

16.—Accession to mortgaged property—*Transfer of Property Act (IV of 1882), ss 70, 82—Priorities—Contribution—Distribution of sale-proceeds.*—Where, after the execution of two simultaneous mortgages in respect of a house and certain lands appurtenant thereto, the mortgagor

MORTGAGE—*continued.*

5 SALE OF MORTGAGED PROPERTY—*continued.*

(a) RIGHTS OF MORTGAGEES—*continued.*

erected two other houses on the lands, and subsequently executed various mortgages in respect of the several houses, and the decree in the suit by the fourth mortgagee directed that the whole of the property should be sold free of incumbrances, in separate lots, and the sale-proceeds to be distributed among the various mortgagees in accordance with their priorities and the property [illegible]

[illegible] as though they had been in existence at the time when the original security was given *Held, also,* that, the sale-proceeds being insufficient to pay off the several mortgagees, they were respectively entitled to only such surpluses, after payment of the two prior mortgagees, as might be attributable to the property subject to the respective mortgages KRISHNA GOPAL SADHANI *v.* MILLER (1902) . . . I. L. R., 29 Calc., 803

17.—[illegible] *perties* [illegible] *mortgag* [illegible] *differen* [illegible] *chaser being mortgagee himself—Effect of such purchase* [illegible]

[illegible]

house, being subject to a mortgage, were brought to sale in execution of a money-decree obtained by the mortgagee against the mortgagor, and were sold subject to the [illegible]

[illegible]

the Transfer of Property Act (IV of 1882) was not in force in Bombay. Subsequently the mortgagee filed this suit to enforce his rights under the mortgage against the house, which he sought to make liable for its proportionate share of the mortgage-debt. At the date of [illegible]

[illegible]

defendant to a proportionate share of the mortgage-debt, he having purchased it subject thereto, and that the plaintiff (the mortgagee) was entitled to recover

The P... Jaipur.

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY—*continued.*

(a) RIGHTS OF MORTGAGEES—*continued.*

such share from him. *Held* by FULTON, *J*, dissenting, that where a mortgagee, instead of enforcing his mortgage and bringing the property to sale free of incumbrances (where such course is open, as it was in the present case), brings to sale the equity of redemption in part of the mortgaged property, and buys it himself, an equity arises which entitles the mortgagor to require satisfaction first out of the property bought by the mortgagee. Otherwise the [illegible]

[I. L. R., 28 Bom., 38

18.—Keeping mortgage alive—*Civil Procedure Code (Act XIV of 1882), s 276—Mortgage, fresh, after attachment—Priority*—When the [illegible]

[illegible] *(1883), L R., 10 I A., 62*, and *Gokul Doss Gopal Doss v. Ram Bux Seochand (1884), L R., 11 I A., 126*, followed. So, where a mortgagor, in order to pay off a previous mortgage decree, executes a mortgage free from encumbrances in favour of a third party, and, after paying off the mortgage decree with the fresh loan, makes over the old mortgage deed to the new mortgagee [illegible]

19.—Priority—*Act IV of 1882 (Transfer of Property Act), s. 74—Rights of prior and puisne incumbrancers inter se*—The puisne mortgagees instituted a suit on their mortgage without making [illegible]

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY—*continued.*

(a) RIGHTS OF MORTGAGEES—*continued.*

sum which was due upon their mortgage at the date of the institution of their suit. *Held* (1) that the puisne mortgagees were entitled to be put into possession on payment to the prior mortgagees of the sum which was actually due upon the prior mortgage at the date upon which the prior mortgagees purchased, and (2) that such possession was, as to the property included in their own mortgage, proprietary, but, as to the property not so included, possession as mortgagees only: they were not entitled to the rights of the prior mortgagees as purchasers of the equity of redemption DELHI AND LONDON BANK v BHIKARI DAS (1901)

[I. L. R., 24 All., 185

20.— [illegible]

himself, obtaining possession in July, 1897 Plaintiff [illegible]

[illegible]

21.—Right of sale by puisne mortgagee—*Suit by puisne mortgagee—Right of sale by puisne mortgagee—Decree on first mortgage to which puisne mortgagee was not a party—Transfer of Property Act (IV of 1882)* [illegible]

which the puisne mortgagee was not a party. *Durga Churn Mukhopadhya v. Chandra Nath Gupta Chowdry (1899), 4 C. W. N, 541*, overruled. DEBENDRA NARAIN ROY v. RAMTARAN BANERJEE (F.B., 1903) . [I. L. R., 30 Calc., 599; s.c., 7 C. W. N., 766

22.—Surplus sale-proceeds—*Transfer of Property Act (IV of 1882), ss 96, 97—Civil Procedure Code (Act XIV of 1882)* [illegible]

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY—*continued.*

(*a*) RIGHTS OF MORTGAGEES—*concluded.*

receives any money out of the surplus sale-proceeds of a share in the property mortgaged to him, sold in

(*b*) PURCHASERS.

23.—**Auction-purchasers**—*Act IV of 1882 (Transfer of Property Act), ss. 91 (f), 85—Decree for money—Mortgage by conditional sale—Suit on mortgage—Confession of judgment, followed by decree for possession—Holder of the money decree not a party—Sale in execution of money decree—Rights of auction-purchaser*—A judgment-debtor under a decree for money mortgaged certain property by a deed of conditional sale. The property mortgaged was attached as the property of the judgment-debtor, and an order for sale was passed. Prior to the sale, however, the mortgagees having put their mortgage into suit, the judgment-debtor confessed judgment, admitted the mortgage-debt, stated that he had not means to pay it, and asked that a decree for possession of the property might be passed in favour of the mortgagees; and a decree was so passed. To this suit the mortgagees, who were found to have had notice of the interest of

auction-purchaser was resisted, in obtaining possession, by the mortgagees, and thereupon sued them for possession. *Held* that the auction-purchaser was entitled to a decree for possession on redeeming the mortgage. *Suraj Bunsi Koer v. Sheo Persad*

24. ———— *Mortgage—Prior and subsequent incumbrancers—Suit by prior incumbrancer not making subsequent incumbrancer a party—Suit for redemption and sale by puisne mortgagee—Rights of purchaser at auction-sale*

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY—*continued.*

(*b*) PURCHASERS—*continued.*

under the decree in the first suit, and of the assignee of the original mortgagee.—One K, holding

a suit fc

decree.

decree,

perty fo,

transferred his rights as mortgagee to P, who was thereupon made a defendant. G obtained a decree for redemption and sale *Held* that P was entitled

25.—**Contribution**—*Co-mortgagors—Decree on mortgage—Private sale of mortgaged property by one judgment-debtor with leave of Court—Civil Procedure Code (Act XIV of 1882), s. 305—Satisfaction of decree by one judgment-debtor—Contribution—Suit by purchaser at private sale to eject one of the judgment-debtors in possession of part of mortgaged property—Lien on such part for contribution passes to purchaser—Transfer of Property Act (IV of 1882), s. 43*—In 1896 a mortgage-decree was passed against Yamnappa and Basappa (respondent-defendants), as co-mortgagors

amount, and the decree-holder obtained an sale. Before the day fixed for the sale, Yamnappa, one of the judgment-debtors, applied to the Court under s. 305 of the Civil Procedure Code (Act XIV of 1882) for a postponement of the sale, in order to enable him to raise the amount of the decree by a private sale of the property. The

he sold the whole of the
of the
o the
tered,
a (the

second judgment-debtor) was in possession of a portion of the property, and he refused to give up possession, alleging that he had separated from Yamnappa and that the land in his possession had fallen to his share on separation, and contending that the sale by Yamnappa to Gurshantappa was not
his share.
ntappa.
Courts
t. On
mappa.
under
ect the

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY—*continued.*

(*b*) PURCHASERS—*continued.*

interest of Basappa. The authority given to Yamnappa under that section related only to his interest, but could not affect the interest of the other judgment-debtor (Basappa), who had not joined him in applying for leave to sell under that section. The appellants (plaintiffs), therefore, purchased only that portion of the property covered by the mortgage decree which belonged to their

Basappa's possession to the extent of Basappa's share of the mortgage-debt. Yamnappa had paid off the

transferee of Yamnappa, as soon as it came into existence, under s. 43 of the Transfer of Property Act (IV of 1882). The only right, therefore, which

26. -Payment in adjustment of decree—*Civil Procedure Code (Act XIV of 1882), s. 258—Agreement by purchaser of mortgaged property to pay an agreed sum to mortgagee holding decree for sale—Transfer of Property Act (IV of 1882), s. 57—Payment into Court by purchaser of mortgaged property in pursuance of adjustment of decree out of Court—Limitation Act (XV of*

The mortgagee consented to the proposed purchase, and

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY—*concluded.*

(*b*) PURCHASERS—*concluded.*

27.—Redemption—*Mortgages, prior and subsequent—Right of purchaser at a prior mortgage sale to redeem the rights of a purchaser at a subsequent mortgage sale.*—Where the plaintiff purchased certain properties at two mortgage sales,

6 REDEMPTION.

(*a*) RIGHT OF REDEMPTION.

money has not been paid ... v. VARAHALU (1901) . I. L. R., 24 Mad., 408

29.—Clog on equity of redemption—*Subsequent ... Provision as to the payment*

dants' deceased father, which contained a clause providing t should not unless that was also pa

MORTGAGE—*continued.*

6. REDEMPTION—*continued*

(*a*) RIGHT OF REDEMPTION—*continued.*

redeem the lands, the defendants objected to the redemption under the above clause. *Per* CURIAM.—Following *Noakes & Company, Limited* v. *Rice* (1902), *L. R., A. C., 24,* a clause which has the effect of clogging the equity of redemption is void. *Hari Mahadaji* v. *Balambhat* (1884), *I. L. R., 9 Bom., 233,* doubted. RAJMAL MOTIRAM *v.* SHIVAJI ANANDRAV (1902) . I. L. R., 27 Bom., 154

30. ——————— *Agreement of sale of the mortgaged property subsequently to mortgage*—It is open to a mortgagor and mortgagee to enter into a contract, subsequently to the mortgage, for the sale of the mortgaged property to the mortgagee. But it must not be part and parcel of the original loan or mortgage bargain. *Ramji* v *Chinto, 1 Bom H C R, 199,* followed and applied. KANHAYALAL BHIKARAM *v* NARHAR LAXMANSHET VANI (1903) I. L. R., 27 Bom., 297

31.—Failure to pay sum ordered by decree for redemption—*Decree for redemption—Failure of mortgagor to pay the sum ordered by the decree—Rights of mortgagee on such failure—Transfer of Property Act (IV of 1882), ss 92 and 93*—In a suit by a mortgagor for redemption of a mortgage dated 17th March, 1891, a decree was passed in 1897, allowing him to redeem on payment of the mortgage-debt within a year from the date of the decree, but the decree did not contain any provision for foreclosure or sale in default of payment on the due date. The plaintiff having made default the defen[illegible] the Court for [illegible] under s. 93 [illegible] ale 1882). Hi[illegible] of [illegible] nd that, as the decree did not contain any clause for foreclosure or sale, s. 93 of the Act was not applicable. *Held,* in second appeal, that the defendant (mortgagee) was entitled to the remedy given by s 93, although the decree was not drawn up as prescribed by s 92 The omission of the Court to draw up the proper decree under s 92 did not deprive the mortgagee of the relief provided by s 93 MURLIDHAR *v* PARSHARAM (1900) I. L. R., 25 Bom., 101

32.—Limitation—*Equity of redemption—Limitation—Adverse possession while period of redemption running—Limitation Act (XV of 1877), s 28.*—An equity of redemption, in common [illegible]

[illegible] the Limitation Act, although the physical possession of the property is not in question. An equity of redemption may with propriety be said to [illegible]

[illegible]

LAL *v.* MANKI BIBI (1902) . 6 C. W. N., 601

33.—Mesne profits—*Mortgage-debt tendered and deposited in Court—Possession of mortgaged property obtained by mortgagee—Mesne profits—Claim to mes*[illegible] *of mortgage-a*[illegible] *of Property* [illegible] the plaintiff [illegible] defendant, wit[illegible] gage-deed pro[illegible] should remain in possession and pay interest to the first defendant until the mortgage-debt was repaid. In 1895 the first defendant sued the plaintiff on the mortgage, and a consent decree was passed, which directed that the defendant therein (the present plaintiff) should pay R300 on the 7th October, 1897, and R400 on the 7th October, 1898, and in case of default in either payment on the specified date possession of the land should be given up to the plaintiff therein (the present defendant 1). Default was made [illegible]

[illegible] 19th March, 1898), the plaintiff (mortgagor), under s. 83 of the Transfer of Property Act (IV of 1882), [illegible] the mesne profits of the land from the date at which he deposited the R700 in Court, *i.e.,* the 19th March, 1898. The Court of first instance held that the plaintiff was entitled to redeem on payment of the R700, but was not entitled to mesne profits. The lower Appellate Court held that, under s. 84 of the Transfer of Property Act (IV of 1882), the plaintiff was entitled to mesne profits from the date on which the first defendant took possession of the land (3rd April, 1898), and ordered redemption on payment by the plaintiff of the R700 less the amount of such mesne profits On second appeal, *held* (reversing the decree of the lower Appellate Court and

MORTGAGE—*continued.*

6. REDEMPTION—*continued.*

(a) RIGHT OF REDEMPTION—*continued.*

restoring the decree of the Court of first instance)

defendant (mortgagee) by tendering and depositing

34.—Onus of proof—*Suit for redemption—Burden of proof on plaintiff—Evidence—Proof of specific mortgage.*—The plaintiff sued for redemption and to recover possession of certain lands, alleging that they had been mortgaged to the ancestors of the defendants about forty-five years before suit. The defendants, who were in possession, denied the mortgage. The Subordinate Judge found the mortgage proved, and passed a decree for redemption On appeal, the Judge reversed the decree and dismissed the suit. He was of opinion that the plaintiff was bound to prove a specific mortgage made forty-five

35.—Pre-emption—*Transfer of Property Act (IV of 1882), ss 54, 60—Mortgage with right*

B100. The instrument of mortgage contained a

MORTGAGE—*continued.*

6. REDEMPTION—*continued.*

(a) RIGHT OF REDEMPTION—*continued.*

entitled to redeem. *Per* SHEPHERD, J.—Under the covenant, and by reason of s. 54 of the Transfer of Property Act, defendant had no interest in the property. His right could be no other than a right to specific performance available, under s 27 of the Specific Relief Act, against a transferee who had

pre-emption springs from contract, it rests only upon a covenant which does not run with the land, and

MORTGAGE—*continued.*

6. REDEMPTION—*continued.*

(*a*) RIGHT OF REDEMPTION—*continued.*

tion in an usufructuary mortgage is an "intangible thing," within the meaning of s. 54 of the Transfer of Property Act, and its transfer by sale can be made only by registered instrument, even though its value may be less than R100. The equity of redemption in a simple mortgage may be tangible immovable property, and its sale can be effected, if its value be less than R100, without a registered instrument, by

had been in possession of the property as mortgagee could not save him from the operation of the law of limitation on his right to sue for specific performance of the contract of pre-emption. *Krishna Menon* v. *Kesavan, I L R, 20 Mad., 305,* referred to Whether such a covenant for pre-emption transgresses the rule against perpetuities—*Quære.* RAMASAMI PATTAR *v.* CHINNAN ASARI (1901)

[I. L. R., 24 Mad., 449

36.—Purchase of part of mortgaged property by a third party—*Act IV of 1882 (Transfer of Property Act), s 91—Purchase of part of the mortgaged property by a third party—Suit by mortgagees to recover from such purchaser a rateable proportion of the mortgage debt.*—The plaintiffs, who were mortgagees of shares in four villages under a deed of simple mortgage, dated the 31st of March, 1883, brought a suit for sale of

Madan Lal, in execution of a simple money-decree against one of the mortgagors, attached the mortgaged shares in two of the villages, the subject of the

obtained a decree, declaring that the property purchased by him was not liable in execution of the decree held by the mortgagees on their mortgage, but the mortgagees brought to sale the shares in the other two villages, one of which they purchased themselves, the other being sold to a stranger. The mortgagees then sued Madan Lal's representatives (he having meanwhile died), and, in this suit, having given credit for the sum realized by the sale of that

MORTGAGE—*continued.*

6. REDEMPTION—*continued.*

(*a*) RIGHT OF REDEMPTION—*continued.*

part of the mortgaged property which had been brought to sale in execution of their decree, they asked for payment of the balance due to them, or rather of such portion thereof as was thought to be

on the other hand, were not entitled, to the detriment of Madan Lal or his representatives, to set up the plea that their mortgage was only valid as to a moiety of the property included in it, and thus to saddle the shares purchased by Madan Lal with a double portion of the mortgage debt; but the defen-

Dip Narain Singh v. *Hira Singh (189), I. L. R.,*

[I. L. R., ... 448

37.—Res judicata—*Transfer of Property Act (IV of 1882), s. 92—Decree for redemption—Omission to execute—Maintainability of subsequent suit on same mortgage—Civil Procedure Code (Act XIV of 1882), ss 13, 244.*—Where a suit for redemption has been instituted, and a decree for redemption has been passed therein, but not executed, a subsequent suit is not maintainable for the redemption of the same mortgage VEDAVALLI *v* VALLABHA VALIYA RAJA (F.B, 1902)

[I. L. R., 25 Mad., 300

38.—Right of purchaser of portion of equity of redemption—*Transfer of Property Act (IV of 1882), ss 60, 85, 91, cl (a)—"Any interest or charge upon property," in sub-s. (a),*

person having any interest in or charge upon the property," in sub-s. (a) of s. 91 of the Transfer of

of the equity of redemption, was not entitled, against the will of the mortgagee, to redeem the whole; he should be restricted to the redemption of that portion only. *Nawab Azmatali Khan* v *Jowahir Sing (1870), 13 Moo. I. A, 404,* at

MORTGAGE—*continued.*

6. REDEMPTION—*continued.*

(*a*) Right of Redemption—*continued.*

p 415, followed. Having regard to the provisions of s. 85 of the Transfer of Property Act as to necessary parties, the review granted after dismissal of suit to bring in the heir of one of the mortgagees as a party defendant was not improper Girish Chunder Dey v Juramoni De (1900)

[5 C. W. N., 83

39.—Rights of incumbrancers inter se—*Act IV of 1882 (Transfer of Property Act), s 85—Sales in execution of decrees separately obtained—Rights of auction purchasers*—Umrao

making the first mortgagee a party thereto, instituted a suit on his second mortgage, and, in 1887, obtained a decree, in execution of which the mortgaged property was put up to sale, and purchased by Kudrat-ullah for R3,000. Both the mortgages in question were registered. In 1896 Kudrat-ullah

gage. *Matadin Kasodhan* v *Kazim Husain (1891), I. L R, 13 All, 432; Janki Prasad* v. *Kishen Dat (1894), I L R, 16 All., 478;* and *Mehrbano* v. *Nadir Ali (1900), I. L. R, 22 All, 212,* distinguished. *Sheo Charan Lal* v. *Sheo*

40.—Sub-mortgagee

MORTGAGE—*continued.*

6. REDEMPTION—*continued.*

(*a*) Right of Redemption—*concluded.*

to him from the first *Raja Kishendatt Ram* v. *R., 5 Calc,* v. *Ananda* referred to.

[I. L. R., 25 All., 46

41.—Suit for foreclosure—Loss of right to redeem—*Act IV of 1882 (Transfer of Property Act), ss. 67, 75, 85, 101—Mortgage—Foreclosure—Parties—Suit for foreclosure by prior mortgagee without making holder of subsequent registered mortgage a party.*—A prior mortgagee (by conditional sale) brought a suit for foreclosure, and obtained a decree without making party to the suit a second mortgagee (by usufructuary mortgage) whose mortgage was registered The second mortgagee, having unsuccessfully objected when the prior mortgagee proceeded to take possession through the Court, sued for and obtained a declaration that he was not bound by the foreclosure decree. The prior mortgagee thereupon sued the second mortgagee, praying that the latter, if he failed to redeem the prior mortgage, might be debarred of his right to redeem, and that in that case possession should be given to the plaintiff. *Held* that the contention of the second mortgagee, that all that the prior mortgagee was entitled to was to obtain possession on redeeming the second mortgage, could not be sustained, and that the prior mortgagee was entitled to the decree prayed for. *Venkata* v *Kannam (1882), I L. R, 5 Mad, 184, Krishnan* v.

I. L. R., 25 All., 1

42.—Time for redemption—*Act IV of 1882 (Transfer of Property Act), ss 86 and 87—Redemption possible at any time until an order*

425, and *Somesh* v. *Ram Krishna Chowdhry (1900), I. L. R, 27 Calc., 705,* followed. Salig Ram v. Muradan (1903)

[I. L. R., 25 All., 231

(*b*) Redemption otherwise than on Expiry of Term.

43.—Redemption after expiry of time—*Period for redemption—Enlargement of time—Order refusing enlargement—Appeal—Civil Proce-*

MORTGAGE—*continued.*

6. REDEMPTION—*continued.*

(*b*) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—*continued.*

dure Code (XIV of 1882), s. 244—Usufructuary mortgage—Foreclosure—Transfer of Property Act (IV of 1882), ss. 92 and 93.—In a suit for redemption of a usufructuary mortgage, the plaintiff, on 26th June, 1899, obtained a decree allowing six months for redemption. On the 14th November, ... e, but ... which ... e 21st ... tension ... April, 1900, he applied for execution of the decree. The lower Court rejected both applications, holding that, the time allowed by the decree having expired, the plaintiff had lost his right to redeem, and on that ground it also refused execution. On appeal by the plaintiff, the Judge reversed both orders, remanding the application for extension of time and granting the application for execution, on the ground that the six months for redemption should be computed from the date of the appellate decree. The defendant appealed to the High Court against both orders *Held* that, as the plaintiff had not appealed against the order remanding the application for enlargement of the time for redemption, the High Court could not reverse that order and enlarge the time, but that the application for execution of the decree might be treated as an application for extension, and the order of the District Court might be upheld as one which extended the time by allowing execution. The order of the District Judge allowing execution was therefore confirmed, and the lower Court was directed to ...

... to enlarge the time prescribed in a decree for redemption is appealable under s. 244 of the Civil Procedure Code. In cases of usufructuary mortgage, decrees for foreclosure should not be made See ss. 92 and 93 of the Transfer of Property Act (IV of 1882). RANGO *v.* BHOMSHETTI (1901) . I. L. R., 26 Bom., 121

44. ——————— *Death of mortgagee—Notice by executors of mortgagee to mortgagor to redeem within three months—Sale of mortgaged property by mortgagor in order to pay off mortgage debt—No probate obtained by executors, and sale, therefore, not completed—Mortgage debt not paid within period of notice—Negligence of executors—Interest on mortgage ceased to run on expiration of notice to redeem*—In 1898 the plaintiff mortgaged certain property to one Shapurji Sukhia for R30,000 with interest at 7½ *per cent. per annum*, the debt to be repayable in one year. Shapurji died in 1901, and the defendants were the executors of his will, which had been lodged for safe custody with the Registrar of Assurances On 8th January, 1902, the defendants requested the Registrar to lodge the will in the High Court in order that they might obtain probate of it. It was duly lodged on the 24th January, 1902, and was sent to the Translator's Office for translation. On the 3rd February, 1902, the defendants gave notice to plaintiff to pay them the debt due on the mortgage intimating at the same time that they had taken steps to obtain probate. The plaintiff, in order to pay off the debt, immediately (12th February, 1902) agreed to sell the property to Haji Osman & Co. for R35,000, the sale to be completed by the 14th April, 1902 The plaintiff informed the defendants of the sale, and requested inspection of the deeds relating to the property. The sale, however, was not completed by the 14th April, 1902, in consequence (as the plaintiff alleged) of defendants not having obtained probate, and the purchasers (Haji Osman & Co) gave notice to the plaintiff that the purchase money was lying idle and that they would charge interest thereon. The plaintiff informed the defendant of ... the ... for ... ants ... nne, ... not ... 3rd ... hree ... 3rd February, 1902. After the receipt of that notice the plaintiffs were at liberty to pay the amount ... the mort- ... If the defendants had used due ... obtaining the translation of the will on the 9th April, they could have obtained probate and been in a position to reconvey. PANDURANG KRISHNAJI *v.* DADABHOY NOWROJI (1902)

[I. L. R., 26 Bom., 643

MORTGAGE—*continued.*

6. REDEMPTION—*continued.*

(*c*) MISCELLANEOUS.

45.—Interest—*Interest on mortgage-debt—When interest ceases to run—Deposit by mortgagor under s. 83 of Transfer of Property Act (IV of 1882)—Duty of mortgagor making such ... Appointment ... perty Act ... h October, ... ed to the ... of redemption ... hole year ... On the ... a view to* redeem, deposited in Court, under s. 84 of the Transfer of Property Act (IV of 1882), the sum of R2,000, which was the whole amount due on the mortgage for the then current year ending 24th October, 1890. The mortgagee was then dead, and his son and heir was a minor, and it was therefore necessary that a guardian *ad litem* should be appointed to receive notice of the deposit as required

MORTGAGE—*continued.*

6. REDEMPTION—*concluded.*

(c) MISCELLANEOUS—*concluded.*

by s. 83. Steps were accordingly taken to appoint

decree, refusing to give the additional interest, holding that "on making the deposit the plaintiff (mortgagor) had done all that had to be done by him" to enable the defendant to take the deposit out of Court as provided by s 84 of the Transfer of Property Act (IV of 1882), and that therefore interest had ceased to run On appeal to the High Court: *Held* (reversing the decree) that the defendant

(plaintiff) had completely performed his part until

46.—**Subsequent loan**—*Sale of equity of redemption—Further loan secured on same property after the sale—Purchaser of equity of redemption not bound to discharge subsequent loan before he can redeem—Act IV of 1882 (Transfer of Property Act), s 60*—A mortgagor who has sold the equity of redemption in property mortgaged by him cannot afterwards charge such property with a further debt so as to render the

7. FORECLOSURE

(a) RIGHT TO FORECLOSURE

47.—*Mortgage by conditional sale—Prior and puisne mortgagees—Payment by puisne mortgagee,*

by puisne mortgagee for foreclosure—Act IV of

MORTGAGE—*continued.*

7 FORECLOSURE—*continued.*

(a) RIGHT TO FORECLOSURE—*concluded.*

1882 (Transfer of Property Act), s. 74—Civil ... Fateh ... of a ... Kunj ... Chand

executed a second mortgage of the same village, also by way of conditional sale, in favour of Bansidhar and Anant Ram In October, 1891, Anant Ram

original mortgagor, and Gaya Prasad, were made defendants. On the same date Gaya Prasad institu-

... *Oudh* ... *R.* 13 ... *o Singh* ... BANSI-

... All., 179

48.—*Foreclosure decree—Transfer of Property Act (IV of 1882), ss 86, 87—Stay of proceedings.*—S 87 of the Transfer of Property Act does not allow the Court to postpone the date of payment on the application of an outsider. The provision regarding the power of the Court to postpone the date of payment relates to matters as between the mortgagor and mortgagee. That section does not

... CHATTERJEE (1902) . . . . . 6 C. W. N., 654

MORTGAGE—*concluded*.

7. FORECLOSURE—*concluded*.

(f) Demand and Notice of Foreclosure.

49.—*Transfer of Property Act (IV of 1882), s. 87—Question arising as to the order absolute for foreclosure—Notice.*—S. 87 of the Transfer of Property Act does not require that any notice should be given to the judgment-debtor before the order absolute for foreclosure is made. TARA PADO GHOSE *v.* KAMINI DASSI (1901) . I. L. R. 29 Calc. 644

8. ACCOUNTS.

50.—*Mortgagee in possession—Redemption—Mode of taking accounts.*—A mortgagor seeking to redeem must prove how much of the debt and interest has been repaid. The duty of a mortgagee in possession is to keep a full, true and accurate account of the actual receipts and disbursements. In taking accounts between a mortgagor and mortgagee, the Judge must decide as to the accuracy or otherwise of the accounts presented to him by the parties, and it is upon these accounts and the evidence before him in the case that he must find the amount payable on redemption. [illegible] *v.* [illegible] (1902) . . I. L. R. 26 Bom. 363

9. DISCHARGE OF MORTGAGE.

51.—*Death of mortgagee—Heirs of mortgagee—Payment of mortgage-debt to one of the heirs.*—Where property is mortgaged to a person who subsequently dies leaving two or more heirs jointly entitled to his estate, payment made by the mortgagor of the amount due on the mortgage, to one of these heirs, without the concurrence of the rest, does not amount to a valid discharge of the mortgage. [illegible] *v.* [illegible] (1903) . . . . I. L. R. 27 Bom. 292

MORTGAGE-DEBT.

——contribution—

See TRANSFER OF PROPERTY ACT, s. 82.
[8 C. W. N. 883

——omission to set up mortgage bond—

See RES JUDICATA—MATTERS IN ISSUE
[I. L. R. 24 All. 429

——payment of, to one of the heirs of mortgagee—

See MORTGAGE—DISCHARGE OF MORTGAGE . I. L. R. 27 Bom. 292

MORTGAGEE.

See MORTGAGE.

——lien of—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.
[I. L. R. 30 Calc. 794

——rent due to—

See BENGAL TENANCY ACT, s. 60
[8 C. W. N. 482

MORTGAGOR AND MORTGAGEE.

See MORTGAGE.

See LEASE—CONSTRUCTION OF
[8 C. W. N. 872

See SURETY—ENFORCEMENT OF SECURITY.
[I. L. R. 30 Calc. 1060

MOTHER.

See HINDU LAW—ADOPTION—ADOPTION BY MOTHER.

See MAHOMEDAN LAW—GUARDIAN.
[I. L. R. 29 Calc. 473

MOTIONS.

See PRACTICE—CIVIL CASES—EXPUNGING . I. L. R. 28 Calc. 272

——obtaining decree on—

See PRACTICE—CIVIL CASES—MOTIONS
[I. L. R. 28 Bom. 73

MOVABLE PROPERTY.

See MAHOMEDAN LAW—ENDOWMENT.
[I. L. R. 24 All. 160

MUKADDAMI TENURE.

See TENURE—MUKADDAMI TENURE.

MULTIFARIOUSNESS.

See JOINDER OF CAUSES OF ACTION.

See PLAINT—FORM AND CONTENTS OF PLAINT—CAUSE OF ACTION
[8 C. W. N. 353

See RENT, SUIT FOR . 8 C. W. N. 880

—Misjoinder of parties and causes of action—*Civil Procedure Code (Act XIV of 1882), ss. 28 and 45—Suit by a purchaser of property for possession, against a person who dispossessed him, as also against the vendor for the refund of the purchase money, whether multifarious.*—In a suit brought by the plaintiff for recovery of possession of land against defendant No. 1 (the person by whom the plaintiff was dispossessed) after declaration of his right as purchaser from defendant No. 2; for an order for the registration of the plaintiff's name under the Land Registration Act (Ben. Act VII of 1876); for mesne profits; and also for a refund of the purchase money from the defendant No. 2 in case the plaintiff's claim against defendant No. 1 failed: the defence was that the suit was bad for misjoinder of parties and causes of action. *Held,* that the suit was not bad for misjoinder of parties and causes of action. [illegible] *v.* [illegible] (1893), I. L. R. 21 Calc. [illegible], and [illegible] *v.* [illegible] (18—

MULTIFARIOUSNESS—*concluded.*

I. L. R., 8 Calc., 963, referred to. SERAJUL HUQ KHAN *v.* ABDUL RAHAMAN (1902)
[I. L. R., 29 Calc., 257; s.c., 6 C. W. N., 300

MUNICIPAL ACTS.

See BENGAL MUNICIPAL ACT.

See BOMBAY CITY MUNICIPAL ACT.

See BOMBAY DISTRICT MUNICIPAL ACT—
(BOM ACT VI OF 1873);
(„ „ II OF 1884);
(„ „ III OF 1901).

See CALCUTTA MUNICIPAL CONSOLIDATION ACT.

See CALCUTTA MUNICIPAL ACT

See MADRAS CITY MUNICIPAL ACT

See MADRAS DISTRICT MUNICIPALITIES ACT

See NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT

MUNICIPAL BOARDS.

——restriction on power of, to make by-laws—

See NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (N. AND O. ACT I OF 1900), *s* 128
[I. L. R., 24 All., 439

MUNICIPAL COMMISSIONERS

——effect of vesting street in—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE
[I. L. R., 25 Mad., 635

MUNICIPAL CORPORATION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888), *ss* 247, 250, 427.
[I. L. R., 30 Calc., 317

MUNICIPAL TAX.

See TAX

MUNSIF.

——jurisdiction of—

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . I. L. R., 30 Calc., 453

1.—Power of District Munsif on revision—*Village Courts Act (Madras Act I of 1889), s 73—Revision by District Munsif of Village Court's proceedings—Payment under protest by a*

MUNSIF—*concluded.*

——jurisdiction of—*concluded.*

defendant to a Village Munsif to avoid attachment and sale under a decree—Order by District Munsif setting aside all proceedings, and for refund by Village Munsif—Legality of order—By s. 73 of the Madras Village Courts Act, 1889, the District Munsif may set aside the decree or order of a Village Munsif on certain grounds A Village Munsif, having passed a decree against a defendant in a suit before him, attached, in pursuance thereof, property belonging to the defendant, who thereupon paid the amount to the Village Munsif under protest Defendant then applied under s 73 to the District Munsif, who set aside the decree and attachment and declared them to be void, and ordered the Village Munsif to refund the money he had recovered from the defendants. *Held* that the order, in so far as it related to a refund of the money by the Village Munsif, was made without jurisdiction, and must be set aside, without prejudice to the rights (if any) of the defendant to proceed against the Village Munsif for damages suffered by reason of his misconduct Under s. 73, a District Munsif has power only to set aside the decree or order complained of, and cannot make an order for payment against the Village Munsif, the section applying to proceedings between litigants. PALANI GOUNDAN *v.* KUPPANDA GOUNDAN (1900)
[I. L. R., 24 Mad., 335

2.—Small cause jurisdiction—*Provincial Small Cause Court—Act IX of 1887, ss 16, 32 (2)—Munsif invested with Small Cause jurisdiction—Extension of jurisdiction—Transfer of cases on file on regular side to small cause side—Cases disposed of as small cause suits—Legality*—A District Munsif, who had small cause jurisdiction up to R100, had, on his file on the regular side of his Court, suits of a small cause nature for amounts between R100 and R200, some of which were partly tried. His small cause jurisdiction was then extended to R200, whereupon he transferred the cases in question to his small cause file, and tried and disposed of them as small causes. *Held* that the transfer and trial were not in accordance with law. HARI KAMAYYA *v.* HARI VENKAYYA (F.B., 1903)
[I. L. R., 26 Mad., 212

MURDER.

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE . 6 C. W. N., 921

See INSANITY I. L. R., 28 Calc., 613
" 29 Calc., 493

——Grave and sudden provocation—*Accused—Wife—Intrigue—Culpable homicide not amounting to murder—Penal Code (Act XLV of 1860), ss. 300, 302 and 304.*—The deceased *H* lived in the house of the accused *A*. *H* contracted an intimacy with *L*, the wife of *A*, in consequence of which he was turned out of the house. Subsequently, on a certain night *H*, at the invitation of *L*, went to the house of *A*, and was taken inside by her. Thereupon *A* and the other accused, relatives of his, seized

MURDER—*concluded*.

H, carried him off to some distance, beat him, broke his arms and a leg, and left him. Three days later, *H* died in consequence of the injuries. All the accused were convicted under s 302 of the Penal Code and sentenced to transportation for life. *Held* that the circumstances under which *H* was found in the house of *A* on the night of the crime were sufficient to cause grave and sudden provocation to *A* and his relatives, within the meaning of s. 300, Excep. (*1*), of the Penal Code, and that the provocation was of a nature that would continue to influence the feelings of the accused for a considerable period after *H* was caught in the house in the company of *L*. Conviction altered to one under s. 304 of the Penal Code, and sentence reduced. ABALU DAS v. KING-EMPEROR (1901)

[I. L. R., 28 Calc., 571; s.c., 5 C. W. N., 708

MUTWALLI.

See MAHOMEDAN LAW—ENDOWMENT.

MYSORE.

——jurisdiction of Justice of the Peace in—

See FOREIGN JURISDICTION ACT, 1879, ss. 4, 6 AND 8.

[I. L. R., 26 Mad., 607

N

NATIVE INDIAN SUBJECTS.

——legal status of—

See FOREIGN COURT, JUDGMENT OF.

[5 C. W. N., 741

——offence committed by, out of British India—

See JURISDICTION OF CRIMINAL COURT —GENERAL JURISDICTION.

[I. L. R., 24 All., 256

NATIVE OF INDIA.

——application of Negotiable Instruments Act, 1881, to—

See NEGOTIABLE INSTRUMENTS ACT.

[I. L. R., 26 Mad., 526

NATIVE RULER.

——suit by—

See CIVIL PROCEDURE CODE, s. 432.

[I. L. R., 25 All., 635

NATIVE STATE.

——jurisdiction of Justice of the Peace in—

See FOREIGN JURISDICTION ACT, 1879 ss. 4, 6 AND 8.

[I. L. R., 26 Mad., 607

NATURE OF TENANCY.

See LANDLORD AND TENANT—NATURE OF TENANCY.

NECESSITY FOR ALIENATION.

See HINDU LAW—

ALIENATION—ALIENATION BY WIDOW—

ALIENATION FOR LEGAL NECESSITY;

WHAT CONSTITUTES LEGAL NECESSITY;

ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—MANAGER.

[I. L. R., 29 Calc., 797

NEGLIGENCE.

See HUNDI—ENDORSEMENT.

[5 C. W. N., 313

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 29 Calc., 735

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL . . 6 C. W. N., 429

See RAILWAY COMPANY.

See RASH AND NEGLIGENT ACT.

[5 C. W. N., 376

—*Negligent act by Government official—Absence of malicious intention—Premature closing of water-supply by mistake of Revenue officer—Right of action—Parties*—Plaintiff, a Government *raiyat*, occupied lands the cultivation of which depended upon a supply of water from a Government channel which was ordinarily kept open until [illegible] , a [illegible] -gli- [illegible] ion [illegible] sed [illegible] eby causing damage to plaintiff's crops. It was part of defendant's duty to see that the channel was closed at a certain date, but he had, on this occasion, closed it too soon by mistake. Plaintiff sued defendant for the damages which he had thereby suffered. *Held* that, inasmuch as plaintiff's right to a supply of water was founded on contract, a right of action, in case of the water being improperly withheld, might exist as against the Government, but that there was none as against the defendant, by whom no legal injury had been committed. *Semble* that, if malicious intention on the defendant's part had been proved, plaintiff might have had a cause of action. *Krishna Ayyan v Venkatachella Mudali, 7 M. H. C. R., 60*, and *Ramachandra v. Narayanasami, I. L. R., 16 Mad., 333*, referred to. CHINNAPPA MUDALIAR v. SIKKA NAIKAN (1900)

[I. L. R., 24 Mad., 30

NEGOTIABLE INSTRUMENTS.

See PROMISSORY NOTES.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS

—**Summary procedure on**—*Civil Procedure Code (Act XIV of 1882), Ch XXXIX—Leave to defend, extension of time to apply for—Limitation Act (XV of 1877), s 4, and Sch II, Art. 159*—In a suit under Ch. XXXIX, Civil Procedure Code, the Court has no power, after the time fixed by the summons for obtaining leave to appear and defend has expired, to extend the time. *Quære*—whether the Court has power to grant an extension of time if an application for such extension be made before the time fixed by the summons has expired. QUAZIE MAHMUDAR ROHMAN *v.* SARAT CHANDRA DUTT (1900) . . **5 C. W. N., 259**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

See HUNDI.

—*Local usage—Applicability of Act XXVI of 1881 to natives of India*—The provisions of the Negotiable Instruments Act are strictly applicable to natives Where any local usage is relied on under s. 1 of the Act, it should be alleged and established by the party who relies upon it. JAMBU CHETTY *v.* PALANIAPPA CHETTIAR (1902)
[I. L. R., 26 Mad, 526

——**s. 30**—

See HUNDI—NOTICE OF DISHONOUR.
[I. L. R., 30 Calc., 977

——**s. 51**—

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.
[I. L. R., 24 Mad., 654

——**s. 93**—

See HUNDI—NOTICE OF DISHONOUR.
[I. L. R., 30 Calc., 977

——**s. 94**—

See HUNDI—NOTICE OF DISHONOUR.
[I. L. R., 26 Mad., 526

——**s. 98**—

See HUNDI—NOTICE OF DISHONOUR.
[I. L. R., 30 Calc., 977

—*Cl. (c)—Damage suffered by drawer by omission to give notice of dishonour—Onus of proof—Partnership between drawer and acceptor—Acceptor also drawer—Discharge of acceptor by* [illegible]

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881—*concluded*.

——**s. 98**—*concluded*.

the endorsee to establish that the drawer could not have suffered damage by the omission. The mere fact that the drawer and acceptor of a bill are partners does not give rise to the presumption that they are partners in respect of the drawing of the bill, or that the bill was drawn by one of them on behalf of both. In such a case the acceptor is not also a drawer, so as to render notice of dishonour unnecessary under s 98 (*e*). The fact that the acceptor of a bill is not liable (because he was joined [illegible]

NEPAL.

—**Whether in India**—*Criminal Procedure Code (Act V of 1898), s. 503—Evidence taken on commission in Nepal—Conviction under s. 411, Indian Penal Code, on such evidence—General Clauses Act (X of 1897), s. 3, cl. (27)—Burden of proving if Nepal is in India*—In a case where a commission was issued under s 503, Criminal [illegible]

Clauses Act, s 3, cl. (27), lies on the party who alleges that the evidence taken there is proper evidence, and, on their failing to do so, the conviction must be set aside *Quære*—whether Nepal is in India SANGBIR LAMA *v* EMPEROR (1902)
[7 C. W. N., 635

NEW TRIAL.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIAL.

See WITHDRAWAL OF SUIT.
[I. L. R., 29 Calc., 239

——**in criminal case**—

See CHARGE TO JURY—MISDIRECTION.
[I. L. R., 29 Calc., 783

See CRIMINAL PROCEDURE CODE, s 403.
[6 C. W. N., 640

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE . **6 C. W. N., 921**

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.
[I. L. R., 30 Calc., 485

—**Conditions of**—Where, no case of fraud or surprise having been made out, a party to the suit sought for a new trial on the ground of discovery after judgment of an important document, which was

MURDER—*concluded.*

H, carried him off to some distance, beat him, broke his arms and a leg, and left him. Three days later, *H* died in consequence of the injuries. All the accused were convicted under s. 302 of the Penal Code and sentenced to transportation for life. *Held* that the circumstances under which *H* was found in the house of *A* on the night of the crime were sufficient to cause grave and sudden provocation to *A* and his relatives, within the meaning of s. 300, Excep. (*1*), of the Penal Code, and that the provocation was of a nature that would continue to influence the feelings of the accused for a considerable period after *H* was caught in the house in the company of *L*. Conviction altered to one under s. 304 of the Penal Code, and sentence reduced. ABALU DAS *v.* KING-EMPEROR (1901)

[I. L. R., 28 Calc., 571; s.c., 5 C. W. N., 708

MUTWALLI.

See MAHOMEDAN LAW—ENDOWMENT.

MYSORE.

——jurisdiction of Justice of the Peace in—

See FOREIGN JURISDICTION ACT, 1879, ss. 4, 6 AND 8

[I. L. R., 26 Mad., 607

N

NATIVE INDIAN SUBJECTS.

——legal status of—

See FOREIGN COURT, JUDGMENT OF

[5 C. W. N., 741

——offence committed by, out of British India—

See JURISDICTION OF CRIMINAL COURT —GENERAL JURISDICTION.

[I. L. R., 24 All., 256

NATIVE OF INDIA.

——application of Negotiable Instruments Act, 1881, to—

See NEGOTIABLE INSTRUMENTS ACT.

[I. L. R., 26 Mad., 526

NATIVE RULER.

——suit by—

See CIVIL PROCEDURE CODE, s. 432.

[I. L. R., 25 All., 635

NATIVE STATE.

——jurisdiction of Justice of the Peace in—

See FOREIGN JURISDICTION ACT, 1879 ss. 4, 6 AND 8.

[I. L. R., 26 Mad., 607

NATURE OF TENANCY.

See LANDLORD AND TENANT—NATURE OF TENANCY.

NECESSITY FOR ALIENATION.

See HINDU LAW—

ALIENATION—ALIENATION BY WIDOW—

ALIENATION FOR LEGAL NECESSITY;

WHAT CONSTITUTES LEGAL NECESSITY;

ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—MANAGER

[I. L. R., 29 Calc., 797

NEGLIGENCE.

See HUNDI—ENDORSEMENT.

[5 C. W. N., 313

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 29 Calc., 735

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL . . 6 C. W. N., 429

See RAILWAY COMPANY.

See RASH AND NEGLIGENT ACT.

[5 C. W. N., 376

——*Negligent act by Government official—Absence of malicious intention—Premature closing* [illegible] *Revenue officer* [illegible]

causing damage to plaintiff's crops. It was [illegible] of defendant's duty to see that the channel was closed at a certain date, but he had, on this occasion, closed it too soon by mistake. Plaintiff sued defendant for the damages which he had thereby suffered. *Held* that, inasmuch as plaintiff's right to a supply of water was founded on contract, a right of action, in case of the water being improperly withheld, might exist as against the Government, but that there was none as against the defendant, by whom no legal injury had been committed. *Semble* that, if malicious intention on the defendant's part had been proved, [illegible] *Kristna* [illegible] *R.* [illegible] *L.* [illegible] 30

NEGOTIABLE INSTRUMENTS.

See PROMISSORY NOTES.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS.

[illegible]

time fixed by the summons for obtaining leave to appear and defend has expired, to extend the time. *Quære*—whether the Court has power to grant an [illegible]

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

See HUNDI

—*Local usage—Applicability of Act XXVI of 1881 to natives of India*.—The provisions of the Negotiable Instruments Act are strictly applicable to natives. Where any local usage is relied on under s 1 of the Act, it should be alleged and established by the party who relies upon it. JAMBU CHETTY *v.* PALANIAPPA CHETTIAR (1902)
[I. L. R., 26 Mad., 526

——s. 30—

See HUNDI—NOTICE OF DISHONOUR
[I. L. R., 30 Calc., 977

——s. 51—

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.
[I. L. R., 24 Mad., 654

——s. 93—

See HUNDI—NOTICE OF DISHONOUR.
[I. L. R., 30 Calc., 977

——s. 94—

See HUNDI—NOTICE OF DISHONOUR.
[I. L. R., 26 Mad., 526

——s. 98—

See HUNDI—NOTICE OF DISHONOUR.
[I. L. R., 30 Calc., 977

—*Cl (c)—Damage suffered by drawer by omission to give notice of dishonour—Onus of proof—Partnership between drawer and acceptor—Acceptor also drawer—Discharge of acceptor by limitation—Effect on liability of drawer.*—When the endorsee of a bill sues the drawer to recover the amount due under the bill, and relies upon s. 98 (c) of the Negotiable Instruments Act to excuse the omission to give notice of dishonour, the *onus* lies on

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881—*concluded*.

——s. 98—*concluded*.

the endorsee to establish that the drawer could not have suffered damage by the omission. The mere fact that the drawer and acceptor of a bill are [illegible]

NEPAL.

—Whether in India—*Criminal Procedure Code (Act V of 1898), s. 503—Evidence taken on commission in Nepal—Conviction under s 411, Indian Penal Code, on such evidence—General Clauses Act (X of 1897), s 3, cl. (27)—Burden of proving if Nepal is in India*.—In a case where a commission was issued under s 503, Criminal [illegible]

NEW TRIAL.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIAL.

See WITHDRAWAL OF SUIT.
[I. L. R., 29 Calc., 239

——in criminal case—

See CHARGE TO JURY—MISDIRECTION.
[I. L. R., 29 Calc., 782

See CRIMINAL PROCEDURE CODE, s. 403.
[6 C. W. N., 640

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE . 6 C. W. N., 921

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.
[I. L. R., 30 Calc., 485

—Conditions of.—Where, no case of fraud or surprise having been made out, a party to the suit sought for a new trial on the ground of discovery after judgment of an important document, which was

NEW TRIAL—*concluded.*

in the possession of the opposite party, but of which the party first named had neglected to obtain discovery before judgment: *Held* that a new trial should not lightly be granted, and in the present case it ought not to be granted. TURNBULL & Co. v. DUVAL (P C, 1902) . . 6 C. W. N., 809

NEXT FRIEND.

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 29 Calc., 735
" 30 Calc., 1021

See PRACTICE — CIVIL CASES — NEXT FRIEND.

NON-APPEARANCE.

——effect of—

See APPEAL—

DEFAULT IN APPEARANCE;

EX PARTE CASES;

See CIVIL PROCEDURE CODE—

s. 99;

s. 100;

ss. 103 AND 108;

s. 108,

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 5 C. W. N., 131

See PRACTICE—CIVIL CASES—NON-APPEARANCE OF PLAINTIFF.

See RECOGNIZANCE TO APPEAR
[I. L. R., 30 Calc., 107

NON-ATTENDANCE.

——of juror—

See JURY—JURY IN SESSIONS CASES.
[6 C. W. N., 887

NON-DELIVERY.

See CONTRACT.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT (XIX of 1873).

——s. 102—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—NORTH-WESTERN PROVINCES.
[I. L. R., 24 All., 153

——ss. 112, 113—

JURISDICTION OF CIVIL IN SUITS RESPECTING PARTI- R., 23 All., 291

NORTH-WESTERN PROVINCES LAND-REVENUE ACT (XIX OF 1873) —*concluded.*

——ss. 113, 114—

See PARTITION—JURISDICTION OF CIVIL COURT, IN SUITS RESPECTING PARTITION.
[I. L. R., 25 All., 277

——s. 114—

See APPEAL — NORTH-WESTERN PROVINCES ACTS . I. L. R., 25 All., 141

——s. 148—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF REVENUE.
[I. L. R., 23 All., 5

——ss. 203, 205B—

See MINOR — LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.
[I. L. R., 23 All., 288

——s 205B—

See GUARDIAN—DISQUALIFIED PROPRIETORS . . I. L. R., 24 All., 136

——s. 241—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION.
[I. L. R., 25 All., 19

——s. 241—

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION . . I. L. R., 23 All., 291

——s. 241, cl. (i)—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.
[I. L. R., 25 All., 527

NORTH-WESTERN PROVINCES LOCAL RATES ACT (III OF 1878).

—*Act IX of 1889 (Kanungo and Patwari Act)—Cess—Assignment of Government revenue—Assignee not entitled to cesses*—*Held* that an [illegible]

[illegible]

[I. L. R., [illegible]

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

——s. 1—

See JURISDICTION—SUITS FOR LAND-RENT . . I. L. R., 23 All., 382

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—*continued*

——Ch. II (ss. 4 to 55A) and s. 93—

—*Landholder and tenant—Suit for rent—Plea*

having no effect beyond that year on the rent payable for the holding In a suit for arrears of rent under s. 93 (*a*) of the North-Western Provinces Rent Act, 1881, the defendant proved a local custom, whereby a tenant was entitled to a proportionate deduction from the rent for any year for such lands as were in that year, owing to fluvial action, unculturable

abatement of rent in the sense of Ch. II, namely, a reduction permanently or for an indeterminate period of the rent payable for his holding, but only a remission or deduction from such rent for a particular year and in respect of such portions of the holding as were unculturable in that year, and inasmuch as no such remission could have been obtained

——s. 10—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—N.-W. PROVINCES [I. L. R., 23 All., 481

——s. 23—

—*Suspension of revenue, and consequent suspension of rent—Lessee entitled to the benefit of suspension of rent*—*Held* that, when the Local Government, under s 23 of the North-Western Provinces Rent Act, suspends payment of revenue, and when suspension of rent has in consequence been ordered, a lessee is entitled to the benefit of the latter suspension. MADAN MOHAN LAL *v* DILDAR HUSAIN (1902) . . . . I. L. R., 24 All., 465

——s. 31—

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT OR SURRENDER OF TENANCY . I. L. R., 25 All., 77

See MORTGAGE—POSSESSION UNDER MORTGAGE . I. L. R., 24 All., 538

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—*continued.*

——ss. 42, 95 and 206—

—*Landholder and tenant—Ejectment—Appraisement of tenant's crops—Assignment of right to receive price of crops—Mode in which such price can be realized—Jurisdiction—Civil and Revenue Courts—Actionable claim—Act IV of 1882,*

of the assessment,—(1) that the assignee's proper remedy was by suit in a Court of Revenue, and not by application to execute the order awarding compensation, (2) that the suit was not a suit of the nature cognizable by a Court of Small Causes; and (3) that the assignment to the plaintiff after the award had

——s. 43—

—*Landholder and tenant—Suit to recover rent in kind—Duty of officer appointed to divide produce or appraise standing crops—Res judicata.*—Where, under s 43 of the North-Western Provinces Rent Act, 1881, an officer is appointed to divide produce, or estimate or appraise a standing crop as between a landholder and his alleged tenant, such officer is not empowered to come to any decision as to

GHULAM MUHAMMAD (1903) [I. L. R., 25 All., 282

——s. 56—

—*Landholder and tenant—Distraint—Hypothecation for rent or produce of land*—*Held*, on a construction of s 56 of Act XII of 1881, that, when the rent of a tenant is in arrears, the landlord is entitled to distrain any crop growing on the tenant's holding, no matter by whom that crop was sown. *Geetum Singh* v *Buldeo Kahar (1872), 4 N. W. P. H C Rep., 76*, and *Fatima Begam* v. *Hansi (1887), I L. R, 9 All, 244*, referred to. MEGH SINGH *v.* TIKA RAM (1901) [I. L. R., 24 All., 127

——s. 93—

See ante, CH II AND S. 93

See INTEREST—MISCELLANEOUS CASES—ARREARS OF REVENUE. [I. L. R., 23 All., 5

NEW TRIAL—*concluded.*

in the possession of the opposite party, but of which the party first named had neglected to obtain discovery before judgment: *Held* that a new trial should not lightly be granted, and in the present case it ought not to be granted. TURNBULL & Co. v. DUVAL (P.C, 1902) . . 6 C. W. N., 809

NEXT FRIEND.

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 29 Calc., 735
„ 30 Calc., 1021

See PRACTICE — CIVIL CASES — NEXT FRIEND.

NON-APPEARANCE.

——effect of—

See APPEAL—

DEFAULT IN APPEARANCE;

EX PARTE CASES;

See CIVIL PROCEDURE CODE—

s. 99;

s. 100;

ss. 103 AND 108;

s. 108;

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 5 C. W. N., 131

See PRACTICE—CIVIL CASES—NON-APPEARANCE OF PLAINTIFF

See RECOGNIZANCE TO APPEAR.
[I. L. R., 30 Calc., 107

NON-ATTENDANCE.

——of juror—

See JURY—JURY IN SESSIONS CASES.
[6 C. W. N., 887

NON-DELIVERY.

See CONTRACT.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT (XIX of 1873).

——s. 102—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—NORTH-WESTERN PROVINCES.
[I. L. R., 24 All., 153

——s. 11[illegible]—

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION . . I. L. R., 23 All., 291

NORTH-WESTERN PROVINCES LAND-REVENUE ACT (XIX OF 1873) —*concluded.*

——ss. 113, 114—

See PARTITION—JURISDICTION OF CIVIL COURT, IN SUITS RESPECTING PARTITION.
[I. L. R., 25 All., 277

——s. 114—

See APPEAL — NORTH-WESTERN PROVINCES ACTS . I. L. R., 25 All., 141

——s. 148—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF REVENUE.
[I. L. R., 23 All., 5

——ss. 203, 205B—

See MINOR — LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.
[I. L. R., 23 All., 288

——s. 205B—

See GUARDIAN—DISQUALIFIED PROPRIETORS . . I. L. R., 24 All., 136

——s. 241—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION.
[I. L. R., 25 All., 19

——s. 241—

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION . . I. L. R., 23 All., 291

——s. 241, cl. (i)—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.
[I. L. R., 25 All., 527

NORTH-WESTERN PROVINCES LOCAL RATES ACT (III OF 1878).

—*Act IX of 1889 (Kanungo and Patwaris Act)—Cess—Assignment of Government revenue—Assignees not entitled to cesses*—*Held* that an assignee of the Government revenue assessed on a certain [illegible]
[I. L. R., 23 All., 505

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

——s. 1—

See JURISDICTION—SUITS FOR LAND-RENT . . I. L. R., 23 All., 282.

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—*continued.*

——Ch. II (ss. 4 to 55A) and s. 93—

—*Landholder and tenant—Suit for rent—Plea of custom allowing deductions on account of land rendered unculturable by action of river—Such deduction not an "abatement of rent" within the meaning of the Act.*—An abatement of rent, in the sense of Ch. II of the North-Western Provinces Rent Act (XII of 1881), implies the reduction of the rent payable for the holding, if not permanently, at all events for an indeterminate period, the rent as abated being substituted for the original rent, and continuing to be the rent of the holding until altered by agreement or by further order. A tenant cannot apply under Ch. II on any ground for a reduction or revision of rent for a particular year only, and having no effect beyond that year on the rent payable for the holding. In a suit for arrears of rent under s. 93 (a) of the North-Western Provinces Rent Act, 1881, the defendant proved a local custom, whereby a tenant was entitled to a proportionate deduction from the rent for any year for such lands as were in that year, owing to fluvial action, unculturable

abatement of rent in the sense of Ch. II, namely, a reduction permanently or for an indeterminate period of the rent payable for his holding, but only

override any of the provisions of the Act, and must be given effect by the Court trying the suit. *Radha Prasad Singh v. Baldeo Misr, Weekly Notes, 1883, p. 43,* distinguished. BENI PRASAD KUARI *v.* DUKKHI RAI (1901) . . I. L. R., 23 All., 270

——s. 10—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—N.-W. PROVINCES. [I. L. R., 23 All., 481

——s. 23—

—*Suspension of revenue, and consequent suspension of rent—Lessee entitled to the benefit of suspension of rent.*—*Held* that, when the Local Government, under s. 23 of the North-Western Provinces Rent Act, suspends payment of revenue, and when suspension of rent has in consequence been ordered, a lessee is entitled to the benefit of the latter suspension. MADAN MOHAN LAL *v.* DILDAR HUSAIN (1902) . . . . I. L. R., 24 All., 465

——s. 31—

MORTGAGE

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—*continued.*

——ss. 42, 95 and 206—

—*Landholder and tenant—Ejectment—Appraisement of tenant's crops—Assignment of right to receive price of crops—Mode in which such price can be realized—Jurisdiction—Civil and Revenue Courts—Actionable claim—Act IV of 1882, s. 135.*—A *zamindar* ejected a tenant, and having done so, caused the value of the tenant's crops standing

that the assignee's proper

——s. 43—

—*Landholder and tenant—Suit to recover rent in kind—Duty of officer appointed to divide produce or appraise standing crops—Res judicata.*—Where, under s. 43 of the North-Western Provinces Rent Act, 1881, an officer is appointed to divide produce, or estimate or appraise a standing crop as between a landholder and his alleged tenant, such officer is not empowered to come to any decision as to the liability of the tenant to pay rent, if such liability is denied. If, therefore, an officer appointed for the purposes of s. 43 should take upon himself to determine any question as to the liability of the tenant to pay rent, his decision will not in any

[I. L. R., 25 All., 282

——s. 56—

—*Landholder and tenant—Distraint—Hypothe-*

[I. L. R., 24 All., 127

——s. 93—

See ante, CH. II AND S. 93.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF REVENUE. [I. L. R., 23 All., 5

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—concluded.

——s. 93—concluded.

See JURISDICTION—SUITS FOR LAND-RENT . . I. L. R., 23 All., 252

[illegible]

—Cl. (a)—Suit for rent—Limitation—Act XV of 1877 (Indian Limitation Act), s. 5—S. 5 of the Indian Limitation Act, 1877, applies to a suit under s. 93 (a) of the North-Western Provinces Rent Act, 1881. Muhammad Husain v. Nasir Husain (1898), I. L. R., 21 All., 25 dissented from. Ram Prasad Kuari v. Durbans Rai (1901)

[I. L. R., 23 All., 377

——s. 95—

See ante, ss. 42, 93 and 203.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—N. W. PROVINCES

[I. L. R., 23 All., 366, 481

24 All., 150

——s. 104

See JURISDICTION—SUITS FOR LAND-RENT . . I. L. R., 23 All., 500

——s. 140

See LIMITATION ACT, 1877, s. 14

[I. L. R., 23 All., 434

See PARTIES—PARTIES TO SUITS—RENT, SUITS FOR, AND INTERVENORS IN SUCH SUITS . . I. L. R., 25 All., 83

——s. 189

See APPEAL—N.-W. P. ACTS—N.-W. P. RENT ACT (XII OF 1881), s. 189.

——s. 203

See ante, ss. 42, 93 and 203.

NORTH-WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS ACT (IX OF 1889).

——Act III of 1878 (Local Rates Act)—Cess—Assignee of Government revenue—Assignee not entitled to cesses.—Held that an assignee of the Government revenue assessed on a certain patti was not entitled to recover patwari rates and local cesses from the zamindar; such rates and cesses have to be paid by the zamindar to the Government. Kesho Das v. Narain Singh (1901)

[I. L. R., 23 All., 503

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (N. & O. ACT I OF 1900).

——s. 128—

—Ss. 128(c), 133—Municipal Board, powers of—By-law—By-law held to be unreasonable, and

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (N. & O. ACT I OF 1900)—concluded.

——s. 128—concluded.

its enforcement refused.—The English law as to the necessity of by-laws being reasonable is applicable to by-laws framed in the exercise of their statutory powers by Municipal Boards in India. The Municipal Board of Naini Tal passed a by-law, under the powers conferred upon it by s. 128, cl. (c), of N. & O. Act I of 1900, to the following effect, namely:—"No coolie, whether bearing loads or not, no servant, except in attendance on his master, and no [illegible] shall use the upper North Mall (one of two parallel roads running along the north side of the Naini Tal lake) at any time." Held that, as regards the words "no servant, except in attendance on his master," this was, under the circumstances, an unreasonable by-law, and the Court declined to give effect to it. EMPEROR v. BAL KISHAN (1902) . . I. L. R., 24 All., 439

——s. 147—

[illegible]—Continuing breach [illegible]—Imposition of fine in advance—[illegible] I of 1900, [illegible] law may [illegible] direct [illegible] competent to the Court to impose such fine in advance while sentencing an offender in respect of the original breach; but there must be proof of the continuing breach having been committed. Emperor v. [illegible] Mohendra Nath Mozumdar (1900), I. L. R., 27 Calc., 665, followed. EMPEROR v. WA[illegible] AHMAD (1902) . I. L. R., 24 All., 3[illegible]

NORTHERN INDIA CANAL AN[D] DRAINAGE ACT (VIII OF 1873).

——s. 45—

See JURISDICTION OF CIVIL COURT—RE[VENUE] AND REVENUE SUITS

[I. L. R., 25 All., 6

NOTICE.

——before making of order—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . 7 C. W. N., 11

——before sanction—

See SANCTION FOR PROSECUTION—NOTICE OF SANCTION . I. L. R., 25 Mad., 50

——before suit—

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT

[7 C. W. N., 10

——constructive—

See REGISTRATION ACT (III OF 1877), ss. 50 AND 17

[I. L. R., 27 Bom., 452

NOTICE—*continued.*

——constructive—*concluded.*

See TRANSFER OF PROPERTY ACT, s 3—"NOTICE" . . 7 C. W. N., 11

——duty of serving, when on insolvent and when on creditors—

See INSOLVENT ACT (11 & 12 VICT c. 21) . . I. L. R., 26 Bom., 171

——effect of non-service of—

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880), ss. 8, 10, 12 [5 C. W. N., 86

——in the alternative, sufficiency of—

See BENGAL TENANCY ACT, s 155 [I. L. R., 30 Calc., 1063

——of acquisition of land—

See BOMBAY CITY IMPROVEMENT ACT. [I. L. R., 27 Bom., 424

——of annulment of incumbrances—

See SALE FOR ARREARS OF RENT—INCUMBRANCES . . 5 C. W. N., 272

——of appeal—

See APPEAL—ACTS—COMPANIES ACT. [I. L. R., 30 Calc., 758

——of application—

See ACT—1863—XX, s 18 [I. L. R., 24 Mad., 685

See COMPANIES ACT, s 169 [I. L. R., 25 Mad., 576

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES [I. L. R., 26 Mad., 41

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY [I. L. R., 25 Mad., 506

——of assignment—

See DEBTOR AND CREDITOR [I. L. R., 26 Bom., 577

See REGISTRATION ACT—

ss. 49 AND 50,

s 50,

s 50 AND s. 17.

——of charge—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See REGISTRATION [I. L. R., 26 Bom., 538

——of claim—

See RAILWAYS ACT (IX OF 1890), ss. 77 AND 140 . I. L. R., 26 Bom., 669

NOTICE—*continued*

——of deposit of mortgage-money—

See MORTGAGE—REDEMPTION—MISCELLANEOUS CASES [I. L. R., 27 Bom., 23

——*of deposit of rent in Court*—

See BENGAL TENANCY ACT, SCH III, ART. 2 (*a*) . . I. L. R., 29 Calc., 283

——of dishonour—

See HUNDI—NOTICE OF DISHONOUR

See NEGOTIABLE INSTRUMENTS ACT, s. 98 . . I. L. R., 26 Mad., 239

——of enhancement of rent—

See LAND-REVENUE. [I. L. R., 26 Bom., 339

——of execution of decree—

See LIMITATION ACT, 1877, SCH. II—

ART. 179—NOTICE OF EXECUTION;

ART. 180. I. L. R., 30 Calc., 979

——of foreclosure—

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.

——of inability to perform contract—

See CONTRACT—BREACH OF CONTRACT. [I. L. R., 30 Calc., 477

——of insolvency; effect of irregularity in posting—

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE. [5 C. W. N., 91

——of prior incumbrance—

See REGISTRATION ACT, s 50 [I. L. R., 25 All., 366

——of proceedings—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—NOTICE TO PARTIES.

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 25 All, 375

——of sale—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—NOTICE OF SALE

See SALE FOR ARREARS OF RENT—

RIGHTS AND LIABILITIES OF PURCHASERS; . 6 C. W. N., 877 [7 C. W. N., 386

SETTING ASIDE SALE. [I. L. R., 24 Mad., 307

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 30 Calc., 1

NOTICE—*continued.*

—of suit—

See BOMBAY CITY IMPROVEMENT ACT. [I. L. R., 27 Bom., 424

See BOMBAY CITY MUNICIPAL ACT (BOM. ACT III OF 1888), s. 527. [I. L. R., 25 Bom., 387

See BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT II OF 1884), s. 48. [I. L. R., 25 Bom., 142

See CIVIL PROCEDURE CODE, s. 424.

See PUBLIC OFFICER [I. L. R., 26 Bom., 809

See SECRETARY OF STATE. [I. L. R., 27 Bom., 189

—of transfer—

See LANDLORD AND TENANT—TRANSFER BY LANDLORD . 7 C. W. N., 454

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 24 Mad., 317

—pleadings not operating as—

See RES JUDICATA—CAUSE OF ACTION—CONTINUING GUARANTEE [I. L. R., 27 Bom., 418

—possession when equivalent to registration, for purposes of—

See REGISTRATION ACT (III OF 1877), ss 49 AND 50 . I. L. R., 27 Bom., 408

—service of—

See LAND ACQUISITION ACT (X OF 1870), ss. 9, 16, 40 . I. L. R., 30 Calc., 576

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895) [6 C. W. N., 830

—sufficiency of—

See COMMISSION—CIVIL CASES. [6 C. W. N., 927

—to accused—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL. [I. L. R., 29 Calc., 457

See SANCTION FOR PROSECUTION—NOTICE OF SANCTION.

—to agent, binding principal—

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS. [L. R., 29 I. A., 203

—to parties—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—NOTICE TO PARTIES.

NOTICE—*concluded.*

—to quit—

See LANDLORD AND TENANT—

TRANSFER BY TENANT; [6 C. W. N., 916, 919

EJECTMENT—NOTICE TO QUIT.

See RULES MADE UNDER ACTS—BENGAL TENANCY ACT. I. L. R., 28 Calc., 590

—to Revenue authorities, of alleged transfer; effect of—

See TRANSFER OF PROPERTY. [L. R., 28 I. A., 46

NOTIFICATION.

—issue of, before commencement of Act—

See BENGAL IRRIGATION ACT, ss. 1, 6. [I. L. R., 28 Calc., 487

—issued under repealed Act, continuance of—

See PETROLEUM ACT (VIII OF 1899), ss. 1 (3), 11 AND 15 . 7 C. W. N., 658

NUISANCE.

See GAMBLING . . 7 C. W. N., 710

See MADRAS CITY MUNICIPAL ACT, 1884, ss. 392, 433 AND 459. [I. L. R., 25 Mad., 118

—under Criminal Procedure Code—

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 26 Mad., 471

See VERDICT OF JURY . 6 C. W. N., 886

UNDER CRIMINAL PROCEDURE CODE.

[illegible]

2.—Dispute as to land—*Decree of Civil Court, existing—Criminal Procedure Code (Act V of 1898), s. 144, order under, effect of—Landlord and tenant—Jurisdiction.*—An order under s. 144, Criminal Procedure Code, made or affirmed contrary to an existing decree of the Civil Court, in respect of the same lands, is illegal. Where the dispute

NUISANCE—*continued.*

UNDER CRIMINAL PROCEDURE CODE—*continued.*

was between a landlord and a tenant, and the landlord obtained a decree for *khas* possession in respect of such lands as had been leased to the tenant, the fact that the landlord was unable to point out the particular lands of which he had obtained posses-

the landlord. GOBIND SAHAI *v.* SIMS AND CARRUTHERS (1902) . . . 6 C. W. N., 466

3.—**Encroachment on road**—*Criminal Procedure Code, s. 133—Encroachment upon unmetalled portion of a Government road.—Held* that any obstruction upon a public road is a nuisance, within the meaning of s 133 of the Code of Criminal Procedure, whether in point of fact it causes practical inconvenience or not QUEEN-EMPRESS *v.* KEDAR NATH (1901) . I. L. R., 23 All., 159

4.—**Jurisdiction of Magistrate**—*Penal Code (Act XLV of 1860), s. 188—Disobedience of an order of a public servant, lawfully promulgated—Order under s. 141, Criminal Procedure Code,*

[6 C. W. N., 580

5.—————*Criminal Procedure Code (Act V of 1898), ss 144, 487—Order to "abstain from a certain act"—Trial by Magistrate,*

from the simultaneous use of a certain *mosque* by members of the *Hanifi* and *Shafi* sects, the Magistrate passed an order, addressed to ten members, who were named, and several others of the *Hanifi* sect, and to three members, who were named, and several others of the *Shafi* sect The order concluded as follows —"I do order hereby that the following order should be observed in regard to the entry of the said *mosque* by any of you or any other Musalmans of the *Hanifi* and *Shafi* sects for a period of two months from this date, unless in the meanwhile you establish your right in a Court of competent civil jurisdiction" It set out five periods of half an hour each during which each sect, respectively, might enter the *mosque* on ordinary days, and two periods of one hour each in which each sect might enter the *mosque* on other days: *Held* that the order was within the powers conferred by s. 144 of the Criminal Procedure Code. Certain members of the *Hanifi* sect having entered the *mosque* in disobedience to the order hereinbefore referred to, they were c

Code, with

vant. The

had passed

was not competent to try the case, inasmuch as he had made the order under s. 144. QUEEN-EMPRESS *v.* ABDULLA SAHEB (1900)

[I. L. R., 24 Mad., 262

6.—**Management of temple**—*Criminal Procedure Code (Act V of 1898), s 144—Order to abstain from interfering with the management of a temple until the eviction of another person—Legality of order.*—An order passed under s. 144 of the Code of Criminal Procedure directed a person (1) not to interfere with the management of a certain temple, (2) until another person should be duly evicted from the management by due course of law. *Held* that the first portion of the order was a direction to "abstain from a certain act," within the meaning of those words as used in s 144 of the Code of Criminal Procedure; but that the latter portion contravened the provisions of sub-s (5) of that section, and that to that extent the order was made without jurisdiction RAMANADHAN CHETTI *v.* MURUGAPPA CHETTI (1900)

[I. L. R., 24 Mad., 45

7.—**Obstruction of pathway**—*Criminal Procedure Code (Act V of 1898), s. 133—Public*

8.—**Possession**—*Criminal Procedure Code (Act V of 1898), ss. 107, 144, 145—Possession, dispute relating to—Finding arrived at without instituting proceeding under s. 145, Criminal Procedure Code, if proper—Chaukidari Act (Ben. Act VI of 1870), s 51, order under, effect of—Security to keep the peace, order if proper.*—Where, in a case of dispute relating to possession of

Code, restraining them in the exercise of certain rights claimed by them as in possession of the lands in dispute, and also proceeded to bind the petitioners over to keep the peace under s. 107, Criminal

NUISANCE—*continued.*

UNDER CRIMINAL PROCEDURE CODE—*continued.*

Procedure Code: *Held* that the Magistrate was not competent to arrive at a finding as to possession, except in a judicial inquiry held under s. 145, Criminal Procedure Code; nor could he rely on a previous order passed under s. 51 of the Bengal Chaukidari Act, as such order only transferred the right to the lands in question, and did not give possession to anybody. *Also* that proceedings under s. 107, Criminal Procedure Code, could not properly be instituted in such a case. *Also* that the Magistrate's order under s. 144, Criminal Procedure Code, having ceased to operate by lapse of time, no order would be passed in respect of it. SARODA PROSAD SINGH *v.* EMPEROR (1902) . 7 C. W. N., 142

9.—Removal of prostitutes—*Criminal Procedure Code (Act V of 1898), ss 133, 139—Public nuisance—Prostitutes, trade and occupation of—Removal of house from roadside, order for—"Physical comfort" of the public—Jury, opinion of.*—The mere existence of houses of prostitutes by the roadside, and the fact that they ply their trade in those houses, cannot affect the "physical comfort" of the passers-by. In a proceeding under s 133, Criminal Procedure Code, certain prostitutes were called upon to remove their trade and occupation from the slopes and neighbourhood of a road; they appeared, and, in showing cause, claimed a jury, which was appointed; the jury were of divided opinion, and the majority suggested that they should be directed to mend their habits, but did not recom- [illegible]

10.—Revival of proceedings—*Code of Criminal Procedure (Act V of 1898), s. 133—Nuisance, removal of—Effect of dropping of previous proceeding—Magistrate, jurisdiction of, to take fresh proceedings regarding the same matter.*—There is no bar in law to the revival of a proceeding under s. 133, Criminal Procedure Code, with regard to the same matter which had been previously dropped, provided there are materials before the Magistrate upon which *primâ facie* he could act The question whether the matter with regard to which a proceeding has been instituted does [illegible]

11.—Time limit—*Criminal Procedure Code (Act V of 1898), s. 144—Urgent cases of apprehended danger, order made upon—Limit as to time—Lapse—Renewal—Magistrate's jurisdiction.*—A Magistrate is not competent to make an order under s. 144, Code of Criminal Procedure, which, not being limited in time, purports on the face of it to be in the nature of a perpetual injunction. Where an order under s. 144, Code of Criminal Procedure, has lapsed on the expiry of two months under sub-s. (5)

NUISANCE—*concluded.*

UNDER CRIMINAL PROCEDURE CODE—*concluded.*

of that section, the Magistrate has no jurisdiction to make an order for its renewal. REMJIT SINGH *v.* LUCHMAN PROSAD (1902) . 7 C. W. N., 140

NUNCUPATIVE WILL.

See PROBATE—OF WHAT DOCUMENTS GRANTED . I. L. R., 25 All., 313

O

OATHS ACT (X OF 1873).

—*Decree upheld in appeal on strength of oath—Final adjudication*—A suit of 1898 had been affirmed on appeal on the strength of an oath taken under the Oaths Act. *Held* that it was a confirmation of the original decree. As between the parties, a decree arrived at after the taking of an oath on a question of fact in the case is none the less a final adjudication. AHMED *v.* MOIDIN (1901) [I. L. R., 24 Mad., 444

——s. 13—

See COMMISSION—CIVIL CASES. [7 C. W. N., 806

OBJECTION.

See APPEAL—OBJECTIONS BY RESPONDENT.

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

OBSTRUCTION.

See RESISTANCE OR OBSTRUCTION TO ARREST.

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

——of public servant—

See PENAL CODE, s. 186. 6 C. W. N., 120

——removal of—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

——to flow of water—

See RIGHT TO USE OF WATER.

—— to public way—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . . 6 C. W. N., 880
[I. L. R., 23 All., 159
7 C. W. N., 117.

OBSTRUCTION—*concluded.*

——to public way—*concluded.*

See RIGHT OF SUIT—OBSTRUCTION OF PUBLIC HIGHWAY

See WRONGFUL RESTRAINT [5 C. W. N., 215

—— to right of way—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC. 5 C. W. N., 335

——to rights of property—

See INJUNCTION — SPECIAL CASES — OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

OCCUPANCY.

See PUNJAB LAWS ACT [I. L. R., 30 Calc., 635

See RIGHT OF OCCUPANCY.

OFFENCE ON THE HIGH SEAS.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS

OFFERINGS.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—OFFERINGS TO HINDU DEITY.

OFFICER.

——liability of—

See COMPANY—WINDING UP—LIABILITY OF DIRECTORS AND OFFICERS.

——of Government—

See GOVERNMENT OFFICERS, ACTS OF.

See PUBLIC OFFICER.

See PUBLIC SERVANT.

OFFICIAL ASSIGNEE.

See APPEAL—ORDERS. [I. L. R., 25 Mad., 406

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

See INSOLVENT ACT (11 & 12 VICT, c 21).

See PUBLIC OFFICER [I. L. R., 26 Bom., 509

OMISSION TO APPEAL.

See APPEAL—OMISSION TO APPEAL IN TIME AGAINST PRELIMINARY ORDER OR DECREE.

OMISSION TO SUE FOR PORTION OF CLAIM.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM

ONUS OF PROOF.

See CONTRACT—WAGERING CONTRACTS. [I. L. R., 25 All., 38

See DECLARATORY DECREE, SUIT FOR—MISCELLANEOUS SUITS [I. L. R., 24 All, 170

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT, PROCEEDINGS IN. [I. L. R., 29 Calc., 187

See FALSE CHARGE. 5 C. W. N., 106

See HINDU LAW—
ADOPTION — EVIDENCE OF ADOPTION; I. L. R., 30 Calc., 999
ALIENATION — ALIENATION BY FATHER; I. L. R., 26 Bom., 326
CUSTOM—IMPARTIBILITY; [I. L. R., 29 Calc., 823
JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE. [5 C. W. N., 91

See LANDLORD AND TENANT—CONSTITUTION OF RELATION — ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT . . I. L. R., 26 Bom., 410

See MALICIOUS PROSECUTION.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R., 27 Bom., 271

See NEGOTIABLE INSTRUMENTS ACT, s 93. [I. L. R., 26 Mad., 239

ONUS OF PROOF—*continued.*

See PARDANASHIN WOMEN.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 30 Calc., 1

See SPECIFIC RELIEF ACT, s. 9.
[I. L. R., 24 All., 501

See SUMMONS, SERVICE OF.
[I. L. R., 23 All., 99

See VARIANCE BETWEEN PLEADING AND PROOF

See WILL—VALIDITY OF WILL
[I. L. R., 23 All., 472

——age—

See EVIDENCE ACT, s. 32, CL. (5)
[I. L. R., 25 Mad., 184

——ejectment—

See LANDLORD AND TENANT—EJECTMENT . . . 6 C. W. N., 105

See SERVICE TENURE.
[I. L. R., 26 Mad., 403

——enhancement of rent—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS.
[I. L. R., 30 Calc., 1033

See RENT, SUIT FOR . 5 C. W. N., 880

——legitimacy—

See EVIDENCE ACT, s. 112.
[I. L. R., 29 Calc., 111

——minority—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 26 Bom., 109

——negligence—

See RAILWAY COMPANY—LIABILITY OF COMPANY . I. L. R., 28 Calc., 401

——partibility of estate—

See HINDU LAW—IMPARTIBLE PROPERTY.
[I. L. R., 24 Mad., 562

——possession, and proof of title—

See UNLAWFUL ASSEMBLY.
[5 C. W. N., 388

——that accused is the person against whom warrant issued—

See WARRANT OF ARREST—CRIMINAL CASES . . I. L. R., 28 Calc., 399

——that lands are mal—

See EVIDENCE—CIVIL CASES—MAPS.
[7 C. W. N., 612

——that Nepal is in India—

See NEPAL . . 7 C. W. N., 635

ONUS OF PROOF—*continued.*

——that Permanent Settlement of 1793 applies to particular land—

See EVIDENCE—CIVIL CASES—MAPS.
[I. L. R., 30 Calc., 291

1. LANDLORD AND TENANT.

1.—*Penal Code (Act XLV of 1860), s. 424—Dishonest removal of property to avoid distraint—Distraint for arrears of rent under the Rent Recovery Act—Absence of presumption in favour of its legality—Onus of proof on prosecution to prove legality—Conviction in absence of such* [illegible] offence, inasmuch as they had a right of private defence of their property unless the distraint was legal. KING-EMPEROR *v.* GOPALASAMY (1902)
[I. L. R., 25 Mad., 729

2.—*Permanency of tenancy.*—In a suit for ejectment, where the defendant sets up a permanent tenancy, the *onus* is upon the defendant to show this. ISMAIL KHAN MAHOMED *v.* AGHORE NATH MUKERJEE (1903) . . . 7 C. W. N., 734

2. LEGITIMACY.

[illegible]

3. LIMITATION AND ADVERSE POSSESSION.

4.—*Limitation—Act XV of 1877, Sch. II, Art. 127—Proof of exclusion from joint family property—Mere non-participation in or refusal to live on joint property, insufficient—Hindu law—Suit by one of three widows against her two co-widows, for partition of widow's estate in their late husband's property—Proof of unchastity on part of plaintiff during widowhood, no ground for refusal—Tenant-in-common—Partition a matter*

ONUS OF PROOF—*continued.*

3. LIMITATION AND ADVERSE POSSESSION —*concluded.*

of right.—One Panguni died in or about the year

She claimed to have participated in the profits of the family property until 1890, but the defendants contended that she had ceased to participate therein for

tiff had been living with her paramour subsequent to her husband's decease, and had supported herself without recourse to the family property, and had refused to live with defendants. *Held* that the burden lay on the defendants of proving that plaintiff, who was admittedly a tenant-in-common with them till 1882, was excluded from enjoyment of the property. Mere proof of refusal on the part of the plaintiff to live with her co-widows, or of non-participation by her in the family property, did not establish ouster or exclusion by defendants, and there was no other evidence to show that she had abandoned her interest to their knowledge. *Held also* that proof of plaintiff's unchastity after her husband's

5.—*Joint family—Adverse possession of a co-sharer as against another co-sharer—Burden of proof.*—The land in question in this suit had

Possession, to be adverse, must be shown to be continuous, public, and adequate to the circumstances of the case. As between brothers, especially when no partition is proved, the adverse possession of one should be proved by more satisfactory evidence than was given in this case. JAGJIVANDAS *v.* BAI AMBA (1900) . . . I. L. R., 25 Bom., 362

ONUS OF PROOF—*continued.*

4. MESNE PROFITS.

6.—*Mesne profits, suit for—Onus—Notice of vacating possession.*—In a suit for mesne profits, as in other cases, it is incumbent on the plaintiff to

5. MORTGAGE.

7.—*Mortgage suit—Fraud—Collusion.*—In a suit on a mortgage, where collusion and fraud are pleaded by a subsequent auction-purchaser of the

6 POSSESSION, AND PROOF OF TITLE.

8.—*Possession—Declaration of title—Suit by person in possession for declaration of title—Burden of proof—Evidence—Effect of plaintiff's possession—Presumption of title—Evidence Act (I of 1872), s. 110.*—The plaintiffs brought this suit in 1898 for a declaration that certain land in the

ONUS OF PROOF—*continued.*

6. POSSESSION, AND PROOF OF TITLE—*concluded.*

act; that the plaintiffs were therefore not relieved from the burden of proving their title; and that they had not proved it. *Per* RANADE, *J.*—When a person in possession of land has been dispossessed, and sues to recover it, the fact of his previous possession will not entitle him to a decree unless he sues under s 9 of the Specific Relief Act (I of 1877) within six months of the date of dispossession. If he sues after the six months have expired, he must prove a *primâ facie* title. In such a case he is entitled to a decree unless a superior title is proved on the other

been

the

uent

disturbance, shifts the burden of proof on the defendant when the *primâ facie* title is made out. When no such *primâ facie* title is made out by the plaintiff, who asks for a declaratory decree, he cannot obtain that decree on the mere ground that he was in possession and that the defendant had no title. Mere wrongful possession is insufficient to shift the burden of proof HANMANTRAV *v* SECRETARY OF STATE FOR INDIA (1900) **I. L. R., 25 Bom., 287**

7. PRINCIPAL AND AGENT

9.—*Act I of 1872 (Indian Evidence Act), s 111—Gift to an agent—Undue influence—Mental capacity of donor*—*Held* that there is nothing to prevent an agent from being the object of the bounty of his principal. If an agent can clearly

8. WILL

10.—*Evidence and proof of will—Suit for declaration that will is not genuine—Omission by party impeaching will, to give evidence or cross-examine witnesses.*—The defendants (widow and sister-in-law of a deceased *talukdar*) set up a will under which they alleged they took all the property of the testator absolutely, whereupon the plaintiffs,

any evidence that the will was forged, though they asserted that "they would prove it to be spurious if necessary," raised no presumption of the genuineness of the will. Nor did the omission of the plaintiffs to cross-examine some witnesses called by the Court previously to hearing to explain the alleged loss and consequent non-production of the will give rise to any presumption in favour of its validity. They were not bound to cross-examine the witnesses,

ONUS OF PROOF—*concluded.*

8. WILL—*concluded.*

which they could not have done without permission of the Court, but were perfectly justified in waiting

OPIUM.

——**illicit, possession of—**

See OPIUM ACT (I OF 1878), s 9. **[I. L. R., 25 All., 262**

OPIUM ACT (I OF 1878).

—s. 9—*Possession of illicit opium—Custody of a locked box, containing opium lawfully belonging to the owner of the box.*—A locked box, containing the stock of opium and books of a licensed vendor of opium, the key of which was kept by the owner, was found in the house of a person who lived next door to the shop of the opium vendor; and it appeared that the opium vendor, instead of taking his box

ORAL EVIDENCE.

See EVIDENCE—PAROL EVIDENCE.

See WITNESS—
CIVIL CASES;
CRIMINAL CASES.

ORDER.

See APPEAL—
DECREES; **[I. L. R., 28 Calc., 81**
ORDERS.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.

See INTERLOCUTORY ORDER.

See LETTERS PATENT, HIGH COURTS, 1865, CL 15

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

——**framed in alternative—**

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION **[I. L. R., 25 All., 234**

ORDER—*concluded.*

——in execution of decree—

See APPEAL—EXECUTION OF DECREE.

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE

——issue of, before commencement of Act—

See BENGAL IRRIGATION ACT, ss. 1, 6 [I. L. R., 28 Calc., 487

——of Magistrate, in respect of nuisance—

See NUISANCE

——of Magistrate, in respect of possession—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO

——when a "decree"—

See CIVIL PROCEDURE CODE, s. 2—"DECREE," DEFINITION OF

[illegible]

DIGAMBAR DAS (1902) . . 6 C. W. N., 548

ORIGINAL SIDE OF HIGH COURT.

——civil—

See RIGHT OF SUIT—FRAUD [7 C. W. N., 353

——right to plead in—

See PRACTICE—CIVIL CASES—VAKIL AND COUNSEL I. L. R., 30 Calc., 986

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [7 C. W. N., 843

ORISSA.

See TRIBUTARY MAHALS OF ORISSA

OUDH COURTS ACT (XIV OF 1891).

—s. 8—*Jurisdiction—Appeal—Additional Judi-* [illegible]

OUDH ESTATES ACT (I OF 1869).

—*Oudh talukdari estate—Succession—Elder son born of younger wife—Younger son born of first wife—Oudh Estates Act (I of 1869), s. 22,*

OUDH ESTATES ACT (I OF 1869)—*concluded.*

cl. (11)—Nature of estate—Conflict between ambiguous and unambiguous texts of Hindu law—Interpretation, rule of—Communis error facit jus—Oudh Estates Act (I of 1869), list 2, ss. 8 and 22, Manu, Ch. XI, verses 122 to 125.—An estate taken under cl (11) of s. 22 of Act I of 1869 descends as an impartible estate under the provisions of Act I of 1869, list 2, ss. 8 and 22. *Dewan* [illegible]

sons of other wives *Ramalakshmi Ammal* v. *Sivanantha Perumal Sethurayar (1872), 14 Moo. I. A, 570,* and *Pedda Ramappa Nayanivaru* v. *Bangari Seshamma Nayanivaru (1880), L. R, 8 I A, 1,* referred to and followed. In construing texts of Hindu law, where certain verses are inconsistent, and one is reasonably free from [illegible]

communis error facit jus is a sound maxim. Manu, Ch. IX, verses 122 to 125, discussed JAGDISH BAHADUR v SHEO PERTAB SINGH (1901) [5 C. W. N., 602: s.c., I. L. R., 23 All., 369; L. R., 28 I. A., 100

——ss. 2, 11—

See HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN. [I. L. R., 25 All., 476

——s. 13—

See WILL—VALIDITY OF WILL. [I. L. R., 25 All., 121

OUDH LAND-REVENUE ACT (XVII OF 1876)

——Ch. VIII (ss. 161 to 177A)—

See COURT OF WARDS [I. L. R., 25 All., 195

——ss. 161, 166, 172—

—*Court of Wards, power of, to alienate wards' property—Award beyond the terms of reference—Ultra vires award.*—The powers of a Court of Wards are those of a guardian, supplemented by [illegible]

OUDH LAND-REVENUE ACT (XVII OF 1876)—*concluded.*

——ss. 161, 166, 172—*concluded.*

where it is not for the benefit of the ward's property or to his advantage An award that goes beyond the terms of reference to the arbitrators is to that extent *ultra vires.* MOHAMMED MUMTAZ ALI KHAN *v.* SAKHAWAT ALI KHAN (1901)
[5 C. W. N., 881 : s.c., I. L. R., 23 All., 394; L. R., 28 I. A., 169

OUDH, LAW OF.

See EJECTMENT, SUIT FOR.
[L. R., 28 I. A., 169

OUDH LAWS ACT (XVIII OF 1876).

See PRE-EMPTION—RIGHT OF PRE-EMPTION . . I. L. R., 24 All., 420

OUDH RENT ACT (XXII OF 1886).

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.
[L. R., 29 I. A., 203

OWNER OR OCCUPIER OF LAND.

——responsibility of—

See RIOTING . I. L. R., 28 Calc., 504

OWNERSHIP.

——reputed—

See INSOLVENT ACT (11 & 12 VICT., C. 21), s. 23 . . I. L. R., 25 Bom., 659
" 25 Mad., 406

P

PAPER-BOOKS.

——disallowance of cost of printing—

See PRIVY COUNCIL, PRACTICE OF—COSTS.
[L. R., 29 I. A., 156

PARDANASHIN WOMEN.

See COMMISSION—CIVIL CASES.
[6 C. W. N., 927

See LIMITATION—QUESTION OF LIMITATION . . I. L. R., 29 Calc., 664

See PAUPER SUIT—APPEALS.
[I. L. R., 24 All., 172

1.—Execution of deed by—*Execution of mortgage deed—Separate explanation necessary where executants are in separate interest.*—Among the executants of a deed of mortgage of a testator's estate to secure debts for which it was

PARDANASHIN WOMEN—*concluded.*

liable were two pardanashin ladies, one an executrix of the will, the other a donee of villages from the testator in his lifetime which in her hands were not liable to the testator's debts *Held* that, to raise one issue as to the due execution of the deed as affecting both ladies, was an error in procedure Even if the executrix was rightly held liable, there must nevertheless be clear evidence of a separate explanation of the deed to the donee of the villages, and a clear understanding by her that she was assuming liability for debts not her own, and was charging her villages therewith. ANNODA MOHUN ROY CHOWDHRI *v.* BHUBAN MOHINI DEBI (1901)
[I. L. R., 28 Calc., 546 : s.c., 5 C. W. N., 489; L. R., 28 I. A., 71

2.—————*Non-production of mukhtarnama—Evidence—Insufficiency of evidence that deed was explained to her and that she understood it.*—In a suit brought against a *pardanashin* lady on a mortgage bond which purported to be signed in her name "by the pen of Sooncler Lal, son-in-law and *am-mukhtar*," under a *mukhtarnama*, which was not produced : *Held* that secondary evidence of the *mukhtarnama* was, on the facts put forward to account for its non-production, inadmissible, but, even if admissible, it was not sufficient to [illegible]

[illegible] (1902)
[I. L. R., 29 Calc., 749 : s.c., 6 C. W. N., 682; L. R., 29 I. A., 127

3.—Will of—*Will of a Mahomedan—Rules applicable to the execution thereof—Undue influence—Indian Succession Act (X of 1865), s. 48* [illegible]

[illegible]

that that section does not apply to the wills of Mahomedans, but for all that it is a useful guide as to what does or does not constitute undue influence. KHAS MEHAL *v.* ADMINISTRATOR GENERAL OF BENGAL (1901) . . . 5 C. W. N., 505

PARDON.

See APPROVER.

PARDON—*continued.*

1.—Withdrawal of—*Criminal Procedure Code (Act V of 1898), ss. 337, 339—Withdrawal of pardon and commitment for trial—Procedure.*—*R* was charged with having committed the offence of dacoity, with others. In consequence of a confessional statement made by *R*, pardon was tendered to him by the stationary Sub-Magistrate, under the District Magistrate's order. *R* was subsequently examined as a witness for the prosecution at a preliminary inquiry into the dacoity held by the Magistrate under Ch. XVIII of the Code of Criminal Procedure, but he retracted his former statement (which, he sa[illegible]
police tortur[illegible]
about the da[illegible]
trial in the [illegible]
as a witness, and, in the end, the persons charged were acquitted. Upon the subsequent application of the police, the District Magistrate withdrew the pardon which had been tendered to *R*, on the ground that the latter had withdrawn and contradicted his first statement. *R* was in due course charged before the same Sub-Magistrate with having been one of the dacoits, and was committed for trial. *Held* that the commitment was legal. The words "in the case," which occur in s 337 (2) of the Code of Criminal Procedure, include a preliminary inquiry, and do not refer to the trial alone. If there is reason to believe that a person to whom pardon has been [illegible]

when pardon is revoked, no steps should be taken against the person who so forfeits it until after the trial of the other accused is over; and that his trial should then [illegible]
Brij Narai[illegible]
Queen-Empr[illegible]
considered.

2.———— *Criminal Procedure Code (Act V of 1898), ss. 337 and 339—Criminal procedure—Pardon tendered and accepted—* [illegible]

PARDON—*concluded.*

the close of the trial, and should be made by the Court of Session, and (2) because the fact, the alleged concealment of which was the ground of the withdrawal, had not been proved. The accused, however, was found guilty and sentenced. On [illegible]

still in force, and the accused should be discharged. As the law stands, the question in such cases is whether the accused has forfeited his pardon by some act of his own. The question is one of fact, in [illegible]

such person shall be examined as a witness "in the case," or whether such person must be examined as a witness at the "trial." *Queen-Empress* v. *Bhau (1898), I. L. R., 23 Bom.*, 493, doubted. KING-EMPEROR *v.* BALA (1901) . I. L. R., 25 Bom., 675

PARENTAGE, PROOF OF.

See LEGITIMACY.

PAROL EVIDENCE.

See EVIDENCE—PAROL EVIDENCE

PARSI MARRIAGE AND DIVORCE ACT (XV of 1865).

See LIMITATION ACT, 1877, SCH. II, ART 35 . . I. L. R., 25 Bom., 644

PARTIES.

PARTIES—*continued.*

See APPEAL—EXECUTION OF DECREES—PARTIES TO SUITS.

See ASSIGNMENT OF CHOSE IN ACTION. [I. L. R., 24 Mad., 252

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUIT

See COMPROMISE—REMEDY ON NON-PERFORMANCE OF COMPROMISE. [5 C. W. N., 386

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—KABULIYATS . 7 C. W. N., 670

See DIVORCE ACT (IV OF 1869) [I. L. R., 30 Calc., 490 n

See DIVORCE ACT (IV OF 1869), ss 7, 11 AND 45 . I. L. R., 30 Calc., 489 [7 C. W. N., 504

See EVIDENCE—CIVIL CASES—DECREES—DECREE NOT *inter partes.* [7 C. W. N., 54

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES. [7 C. W. N., 678

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . 5 C. W. N., 273

See MISJOINDER

See MORTGAGE—

SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES; [I. L. R., 30 Calc., 599

REDEMPTION—RIGHT OF REDEMPTION . . 5 C. W. N., 83

See MULTIFARIOUSNESS.

See PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION [I. L. R., 28 Calc., 769

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

PARTIES TO PROCEEDINGS;

NOTICE TO PARTIES; [7 C. W. N., 705

PARTIES—*continued.*

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—*concluded.*

DISPUTES AS TO RIGHT OF WAY, WATER, ETC. . 5 C. W. N., 67

See RECEIVER . . 6 C. W. N., 829 [I. L. R., 30 Calc., 593, 721

See RES JUDICATA—PARTIES.

See RESUMPTION—EFFECT OF RESUMPTION—EFFECT ON PATTA. [L. R., 30 I. A., 159

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS. [6 C. W. N., 314

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—PARTIES.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES. [I. L. R., 29 Calc., 682

——addition of—

See HINDU LAW—GIFT—POWER TO MAKE AND ACCEPT GIFTS. [I. L. R., 27 Bom., 31.

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE. [I. L. R., 25 Mad., 406

See LAND ACQUISITION ACT (I OF 1894), ss 30 AND 53 . I. L. R., 25 All., 133

See LIMITATION ACT, 1877, s. 22.

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS. [I. L. R., 27 Bom., 157

See TRADE MARK. [I. L. R., 25 Bom., 433

——death of—

See DEATH.

——misjoinder of defendants—

See APPEAL—ORDERS—ORDER REJECTING A PLAINT . . 6 C. W. N., 585

——non-appearance of—

See NON-APPEARANCE.

——privilege of—

See DEFAMATION . 5 C. W. N., 293

See LIBEL . I. L. R., 27 Bom., 585

——same party cannot be plaintiff and defendant in one suit—

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS. [I. L. R., 25 Bom., 606

——substitution of—

See APPEAL—ORDERS—ORDER UNDER s. 372, CIVIL PROCEDURE CODE. [I. L. R., 24 All., 532

See PRACTICE—CIVIL CASES—PARTIES.

PARTIES—*continued.*

——suits by some of a class as representatives of class—

See RIGHT TO USE OF WATER.
[I. L. R., 29 Calc., 100

1 PARTIES TO SUITS.

1.—Heirs.—The practice hitherto prevailing in the mofussil of making a dead man "by his heir" a party to a suit is erroneous, and should be discontinued. GOVIND ABAJI JAKHADI *v* MOHONIBAI VINAYAK JAKHADI (1901). I. L. R., 25 Bom., 494

2.—Idol—*Shebait*—It is a settled rule of Hindu law that an idol is a juridical person who can take

3.—Joint family—*Letters Patent—Transfer of Property Act (IV of 1882), s 85 — Hindu law — Mitakshara— Mortgage—Kurta—Decree—Statutes, interpretation of — Notice — Civil Procedure Code (Act XIV of 1882), ss 437, 575 —Joinder of parties — Redemption* — In a joint *Mitakshara* family, consisting of a father and minor son, the father, as *kurta* of the family, by a mortgage bond hypothecated the joint property.

the minor plaintiff, it must now be taken as between him (the plaintiff) and the mortgagee to have been

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

of the same. *Bank of England* v. *Vagliano (1891), A. C., 107, 144; Narendra Nath Sircar* v. *Kamalbasini Dasi (1896), I L. R., 23 Calc., 563; Rajnarain Bhaduri* v. *Katyayani Dabee (1900), I. L. R., 27 Calc, 649,* referred to. LALA SUBAJ PROSAD *v.* GOLAB CHAND (1901)

[I. L. R., 28 Calc., 517; s.c., 5 C. W. N., 640

4.——————*Hindu law—Joint Hindu family—Mortgage—Liability of non-executant members on a mortgage executed by some only of the members of a joint Hindu family—Burden of proof.* —In a suit for sale on a mortgage of the joint family property executed by the father and three of his sons, the plaintiff made defendants, besides the executants, the fourth son, who was a minor, and four grandsons, also minors *Held* that the non-executant members of the family were properly arrayed as defendants to

Modhun Mohun (1885), I. L. R, 13 Calc., 21, referred to. DEBI DAT *v* JADU RAI (1902)

[I. L. R., 24 All., 459

5.——————*Mortgage—Joint Hindu family—Liability of other members of the family under a mortgage executed by the manager.*—Where a mortgage of joint family property has been executed by the managing members of a joint Hindu family, the remaining members of the family are proper parties to a suit for sale based on such mortgage

6.——————*Act IX of 1872 (Indian Contract Act), s 239—Partnership—Joint Hindu family—Rights and liabilities of a partnership*

are not shown to have been admitted into the trading firm, or to have taken part in its business, need not be made parties as plaintiffs to a suit to recover moneys due to the family trading firm. *Kalidas*

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Keraldas v. *Nathu Bhagvan (1883), I. L. R., 7 Bom., 217; Imam-ud-din* v. *Liladar (1892), I. L.*

ANANT RAM *v.* CHANNU LAL (1903)
[I. L. R., 25 All., 378

7.—Legacy, suit for—*Executor—Legacy—Suit*

executor for breach of trust—Trust Act (II of 1882), s 23—A legatee is entitled to sue an executor for a legacy bequeathed to him by a Hindu testator in the mofussil. In case such a suit is brought by one legatee, the executor may apply, for his own protection, that other legatees shall be made parties, so that if any rateable abatement is requisite the extent of such abatement may be ascertained in a manner binding on all parties interested But any such application must be made at the earliest possible opportunity, having regard to the provisions of

completely to adjudicate upon and settle all the

PURSHOTTAM DEVJISHET THAKAR *v.* KALA GOVINDJI THAKAR (1901) I. L. R., 26 Bom., 301

8.—Mortgages, suits concerning—*Trans-*

purchased a portion of the mortgaged property with the consent of the mortgagee, are not *necessary parties in a suit by the mortgagee for contribution or apportionment* of the mortgage debt. A suit by the mortgagee, framed improperly for a declaration of the rights of the purchasers of portion of the mortgaged property of redemption to the properties purchased by them, who were not made parties in the mortgage suit, and for declaration of the mortgagee's absolute right over those properties on the failure of such purchasers to redeem, and for *khas* possession, will not lie. The only relief to which the mortgagee in such a case is entitled is a decree for apportionment of the mortgage debt on the property purchased by the purchasers, account being t f the propert other parties f the portion by the mor CHAND . 423

9. ———— *Civil Procedure Code (Act XIV of 1882), s. 437—Parties—Mortgage—Decree for foreclosure—Decree against executor—Application for redemption by beneficiary.*—Where a decree for foreclosure was obtained against *S*, who was the executor of his father's estate, and subsequently *A*, a brother of *S*, and *M*, a purchaser of some of the mortgaged properties from *A*, made an application to be made parties and to redeem: *Held that they were not entitled to be made parties* MOHANAND CHATTERJEE *v.* AKHOY KUMAR BABARI (1901) . . . . . 6 C. W. N., 488

10. ———— *Transfer of Property Act (IV of 1882), s 85—Appeal—Parties—Practice.*—A *jenmi*, having sued the *kanomdar* and his sub-tenants, obtained a decree for redemption and possession on certain terms. The sub-tenants, objecting to

set aside, as no reasonable excuse was forthcoming for the omission to make him a party. *Ramunni Panikar* v. *Sankara Panikar (1889), I. L. R., 25 Mad., 571n,* and *Vedapuratti* v. *Govinda Menon (1892), I. L. R., 25 Mad., 571n,* followed. VEDAPURATTI *v.* AVARA (1901)
[I. L. R., 25 Mad., 568

11. ———— *Transfer of Property Act, s 85—Confirmation of possession, suit for, by prior mortgagee—Redemption—Puisne mortgagee, right of, after sale by prior mortgagee—Parties*—A decree obtained by a prior mortgagee, who had no knowledge of puisne mortgagees, is not bad under s 85 of the Transfer of Property Act because the latter were not made parties Where a prior mortgagee, who had purchased the mortgaged property in execution of such a decree, brought a suit for confirmation of possession against the puisne mortgagees, who also had previously purchased that property in execution of their mortgage decrees: *Held* that the plaintiff ought to succeed against the puisne mortgagees, but subject to their right to redeem the prior mortgage. *Gopee Bundhoo Shantra* v. *Kaleepudo Banerjee (1875), 23 W. R., 338,* distinguished. A purchaser under a prior mortgage may always shield his possession and protect his interest by *setting up such prior mortgage, and it is not proper* to allow him to be dispossessed simply on the ground that a third party has the right to redeem. BUNWARI JHA *v.* RAMJEE THAKUR (1902) . 7 C. W. N., 11

12. ———— *Transfer of Property Act (IV of 1882), s. 85—Non-joinder—Apportionment*

PARTIES—*continued.*

1. PARTIES TO SUITS—*concluded.*

of mortgage debt—Purchaser of mortgaged property—Release—When a purchaser from the mort-

and the other mortgaged property. In such a case the mortgage should be treated as split up into two HARI KISSEN BHAGAT *v.* VELIAT HOSSEIN (1903) [I. L. R., 30 Calc., 755; s.c., 7 C. W. N., 723

13.—Receiver—*Practice—Application for leave to sue a Receiver*—The Receiver is not a necessary party to a suit for possession of immovable property SUTTYA SUTTYA GHOSAL *v* GOLAP MONI DEBI (1897) . . 5 C. W. N., 27

14.—Rent, suits for, and intervenors in such suits—*Appeal—Defect of parties—Death of one of plaintiffs-respondents—Effect of not bringing in the heirs of the deceased on the record—Suit for arrears of rent by several plaintiffs—Joint-*

appeal could not proceed, and must fail by reason of defect of parties. BEJOY GOPAL BOSE *v* UMESH CHANDRA BOSE (1901) . . 6 C. W. N., 196

15.——————*Act XII of 1881 (N.-W. P. Rent Act), s 148—Landholder and tenant—Suit for rent—Plea of payment to third person—Suit by such third person for declaration of title and for possession—Limitation*—*Held* that the proviso to s 148 of the North-Western Provinces Rent Act, 1881, refers only to a suit to recover the rent in respect of which the suit mentioned in the first paragraph of the section has been brought, which rent has actually been paid to a third person. The proviso was not intended to abridge the period

2. SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

16.—*Civil Procedure Code (Act XIV of 1882), s. 30—Leave to sue given after commencement of*

PARTIES—*continued.*

2. SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*concluded.*

action—Previous refusal—Validity of suit.—Leave to sue under s. 30 of the Code of Civil Procedure need not necessarily precede the commencement

3 ADDING PARTIES TO SUITS.

(*a*) PLAINTIFFS.

17.—*Malabar Law—Suit by one of two urulans to recover property demised on Kanom—Non-joinder of the only other urulan as co-plaintiff—Joinder as defendant—Evidence of adverse acts—Maintainability of suit*—One of two *urulans* sued to redeem property which had been demised to the defendants on *kanom* He did not join the other *urulan* as a co-plaintiff, but impleaded him as a defendant The other *urulan* had granted a renewal of the *kanom*, and plaintiff in his suit ignored that renewal and contended that it was invalid. On

Mad, 296, distinguished and doubted. MARIYIL RAMAN NAIR *v* NARAYANAN NAMBUDIRIPAD (1902) . . . . I. L. R., 26 Mad., 461

(*b*) RESPONDENTS.

18.—*Act IV of 1882 (Transfer of Property Act), ss. 88, 89—Decree for sale—Decree assigned before the passing of an order absolute—Appeal—Assignee not made a party to appeal until after*

is assigned before any order absolute is made, the assignee takes subject to all the liabilities resulting from the application of the doctrine of *lis pendens.* Such an assignee, for example, may properly be made a party, under s. 372 of the Code of Civil Procedure, to an appeal from the decree preferred against his assignors, and it is not competent to him to raise any defence, such as a plea of limitation, to the appeal which could not be raised by his assignors. CHUNNI LAL *v* ABDUL ALI KHAN (1901) [I. L. R., 23 All., 331

PARTIES—*continued.*

4. SUBSTITUTION OF PARTIES.

(a) PLAINTIFFS.

19.—*Civil Procedure Code (Act XIV of 1882), ss. 372, 588 (21)—Devolution of interest pending suit—Chota Nagpore Incumbered Estates Act (VI of 1876), s. 16—Manager of incumbered estate—Owner—Appeal from order disallowing objections to substitution—Reports of cases.*—The words "devolution of interest," in s 372 of the Civil Procedure Code, do not mean only devolution by

a case to persons, alleging themselves to be owners of the estate, to apply to be made plaintiffs in the place of the Manager, under s 372 of the Civil Procedure Code On an application for substitution

(1900)
[I. L. R., 28 Calc., 171; s.c., 5 C. W. N., 307

20.—*Civil Procedure Code (Act XIV of 1882), ss. 365, 367, 588, cl. (18), and 591—Limitation Act (XV of 1877), Sch. II, Art 175A—Suit to recover possession—Death of the plaintiff pending suit—Legal representative—Practice—Procedure.*—On the 30th November, 1897, Mahadev Narayan sued to recover certain property from the defendants. He died on the 27th February, 1899,

opposed this, but took no objection to her right to appear as Mahadev's representative. In August, 1899, the first defendant filed his written statement, in which for the first time he raised the question as to Balabai's right to represent the deceased plaintiff Mahadev. The case subsequently came on for hearing, and issues were raised on the pleadings, the first issue being whether Balabai was Mahadev's legal representative. Evidence was taken on all the issues, and the Court found all of them in Balabai's favour, and passed a decree accordingly The defendant appealed

It found that Balabai was not the nearest heir and legal representative of the deceased plaintiff Mahadev, and thereupon it reversed the lower Court's decree, and dismissed the suit. On second appeal: *Held* by

PARTIES—*continued.*

4. SUBSTITUTION OF PARTIES—*continued.*

(a) PLAINTIFFS—*continued.*

CHANDAVARKAR and BATTY, JJ. (ASTON, J., dissenting), reversing the decree and remanding the case for a decision on the merits, that the lower Appellate Court was wrong in going into the question as to Balabai's right to represent the deceased plaintiff Mahadev, and in dismissing the suit on finding that she had no such right. *Per* CHANDAVARKAR, J. —The Subordinate Judge acted rightly under s. 365 of the Civil Procedure Code (Act XIV of 1882) in placing Balabai on the record. It was doubtful whether he could afterwards re-open the question and consider it at the hearing under s 367. But, assuming that he could, he decided it with the other issues. His decision on that point was an order appealable under cl. (18) of s 588. But the defendant did not appeal against that order He

21.—*Civil Procedure Code (Act XIV of 1882), s. 365—Application to be brought on record in place of deceased plaintiff—Order—Continuance of suit—Objection by defendant at late stage of case—Procedure*—L instituted a suit to recover a debt, and died while the suit was pending, leaving no issue Within two-and-a-half months of his decease, his widow applied, under s. 365 of the Code

A defendant then, after a number of witnesses had been examined, presented a petition, purporting to be

PARTIES—*continued.*

4. SUBSTITUTION OF PARTIES—*continued.*

(*a*) PLAINTIFFS—*concluded.*

bound to proceed with the suit after the name of th applicant had been entered on the record in plac

with a view to ascertaining whether his widow was entitled to prosecute the suit as his legal representative. Objection, if raised at all, should have been raised at the earliest opportunity, and failure to object then precluded the defendant from raising it, as he had done, at a late stage of the suit *Oula* v. *Beepathee, I L. R, 17 Mad, 209,* and *Subbayya* v *Saminadayyar, I L. R, 18 Mad, 496,* distinguished. MEENATCHI ACHI *v.* ANANTHANARAYANA AYYAR (1902) **I. L. R., 26 Mad., 224**

22.—*Limitation Act (XV of 1877), s. 22—Civil Procedure Code (Act XIV of 1882), s 437—Suit brought by executor—Beneficiaries, names of, subsequently substituted as plaintiffs*—Where a suit for recovery of possession was brought by an executor on the 14th September, 1898, and the names of the beneficiaries who took possession of the estate during the pendency of the suit were substituted as plaintiffs on the 23rd November, 1900: *Held* that no new plaintiffs were substituted, within the meaning of s. 22 of the Limitation Act, and that the substitution of the names of the plaintiffs did not make a new suit. JANHABI CHOWDHURANI *v* BROJO MOHINI CHOWDHURANI (1903) **7 C. W. N., 617**

(*b*) DEFENDANTS.

23.—*Civil Procedure Code (Act XIV of 1882), s 368—Bringing one out of several legal representatives of a defendant on record—Effect of decree on the estate—Income Tax Act (II of 1886)—Sale of property for arrears of tax—Lis pendens—Purchase at sale for arrears of income tax—Subsequent sale in execution of prior mortgage decree—Duty of purchaser at revenue sale to pay amount due under mortgage and prevent sale in execution*—Plaintiff, as the assignee of a mortgage executed by the father of first defendant, sued

passed, which was never impeached as being fraudulent or collusive. As a fact, first defendant was not

Recovery Act) and purchased by second defendant in 1896 In 1897 the mortgaged property was sold in execution of the decree in plaintiff's suit on the

PARTIES—*continued.*

4. SUBSTITUTION OF PARTIES—*continued.*

(*b*) DEFENDANTS—*concluded.*

mortgage, and plaintiff became the purchaser, the

subsequently dispossessed by defendants Nos. 2 to 5,

prescribed by the Revenue Recovery Act to the recovery of arrears of income tax *Held, further,*

24.—*Civil Procedure Code (Act XIV of 1882), ss. 368 and 32—Application for substitution to deceased defendant—Substitution of heirs under s 368—Will of deceased defendant—Probate—Substitution of executors in place of heirs—S. 32—Bonâ fides—Limitation*—Where an applicant obtained substitution of names of the heirs of a deceased defendant, under s 368, Civil Procedure Code, through want of sufficient information that probate of the will of the said deceased had been granted, and subsequently applied, more than six months after the death, to have the names of the said heirs struck out and those of the executors substituted: *Held* that the application was one under s 32, Civil Procedure Code, and that, even under s. 368, Civil Procedure Code, it was not barred, as the applicant had throughout had a *bonâ fide* desire to effect substitution of the proper legal representatives, and had shown sufficient cause for delay. HOSSEIN ALI *v* ABDUR RAHIM (1903) **[7 C. W. N., 529**

PARTIES—*continued.*

4. SUBSTITUTION OF PARTIES.

(*a*) PLAINTIFFS.

19.—*Civil Procedure Code (Act XIV of 1882), ss. 372, 588 (21)—Devolution of interest pending suit—Chota Nagpore Incumbered Estates Act (VI of 1876), s 16—Manager of incumbered estate —Owner—Appeal from order disallowing objections to substitution—Reports of cases.*—The words "devolution of interest," in s. 372 of the Civil Procedure Code, do not mean only devolution by

a case to persons, alleging themselves to be owners of the estate, to apply to be made plaintiffs in the place of the Manager, under s. 372 of the Civil Procedure Code. On an application for substitution made under s 372 of the Civil Procedure Code, it was objected that the application could not be granted, but the Court overruled the objection and

(1900)

[I. L. R., 28 Calc., 171; s.c., 5 C. W. N., 307

20.—*Civil Procedure Code (Act XIV of 1882), ss. 365, 367, 588, cl. (18), and 591—Limitation Act (XV of 1877), Sch II, Art. 175A—Suit to recover possession—Death of the plaintiff pending suit—Legal representative—Practice—Procedure.*—On the 30th November, 1897, Mahadev Narayan sued to recover certain property from the

to appear as Mahadev's representative In August, 1899, the first defendant filed his written statement, in which for the first time he raised the question as to Balabai's right to represent the deceased plaintiff Mahadev. The case subsequently came on for hearing, and issues were raised on the pleadings, the first issue being whether Balabai was Mahadev's legal representative. Evidence was taken on all the issues, and the Court found all of them in Balabai's favour, and passed a decree accordingly. The

PARTIES—*continued.*

4. SUBSTITUTION OF PARTIES—*continued.*

(*a*) PLAINTIFFS—*continued.*

CHANDAVARKAR and BATTY, *JJ.* (ASTON, *J.*, dissenting), reversing the decree and remanding the case for a decision on the merits, that the lower Appellate Court was wrong in going into the question as to Balabai's right to represent the deceased plaintiff Mahadev, and in dismissing the suit on finding that she had no such right. *Per* CHANDAVARKAR, *J.*

defendant did not appeal against that order. He appealed against the whole decree, and in his appeal he objected to the order. Under s. 591, however,

show that the order under s. 367 had affected the decision, the lower Appellate Court ought not to have reversed the decree of the Court of first instance. BALABAI *v.* GANESH SHANKAR PANDIT (1902)

[I. L. R., 27 Bom., 162

21.—*Civil Procedure Code (Act XIV of 1882), s. 365—Application to be brought on record in place of deceased plaintiff—Order—Continuance of suit—Objection by defendant at late stage of case—Procedure.*—*L* instituted a suit to recover a debt, and died while the suit was pending, leaving

undivided brother. The petitioner asked the Court to decide the question, under s 367, as to who was the legal representative of the deceased plaintiff. The District Munsif heard the parties, and (without making an elaborate inquiry) held that the widow was the proper heir (and should produce a succession certificate before judgment should be delivered), but he also directed, in order to prevent future disputes, that the alleged undivided brother should be joined as a party. A petition signifying his consent to be so joined was filed by the last-mentioned person. *Held* that the order was right. Under s 365 of the Code, the Court was

PARTITION—*continued.*

1. RIGHT TO PARTITION—*concluded.*

(*a*) GENERALLY—*concluded.*

High Court) that "neither by the terms of the original grant nor of the subsequent orders of the ruling power, nor by family custom, nor by adverse possession has the defendant's branch of the family acquired a right to perpetual management of the

I. L. R., 27 Bom., 353:
[s c, L. R., 30 I. A., 77
7 C. W. N., 409

(*b*) PARTITION OF PORTION OF PROPERTY.

2.—*Reg. III of 1872—Partition of mal raiyati land in Chota Nagpur—Partition of trees and land—Ghatwal*—As between two *mal raiyats* with whom a settlement has been made under Regulation III of 1872 there may be

2 JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

3.—*Partition and accounts, suit for—Parties—Common manager, a necessary party if accounts for his period of managership claimed—Agree-*

PARTITION—*continued.*

2. JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*concluded.*

for the appointment of a Commissioner; that the common manager (defendant No. 1) and other defendants were rightly joined together in the same suit, because they made a common cause to defeat the plaintiff's claim for separation, and also because accounts were claimed for the period covered by the managership of the defendant No 1, and the other defendants are intimately connected with, and interested in taking, such accounts; and that, though it may be competent to the parties to enter into an agreement not to divide their joint properties for a limited period

4.—*Act XIX of 1873 (North-Western Provinces Land-revenue Act), ss. 112, 113, 241 (f)—Trees a proper subject of partition by the Revenue authorities—Question of title not raised at the time of partition, but subsequently by a suit*

authorities go with the land, and may properly be partitioned along with it by the Revenue authorities. MUHAMMAD SADIQ *v.* LAUTE RAM (F B, 1901)
[I. L. R., 23 All., 291

5.—*Act XII of 1887 (Bengal, N.-W. P. and Assam Civil Courts Act), s. 21—Act XIX of*

s. 113 of the N.-W. P. Land-revenue Act, 1873, a Court
and th
the val
partitio
which
divided

PARTITION—*concluded.*

3. MISCELLANEOUS CASES

6.—**Mesne profits**—*Joint family estate—Possession by one member—Partition—Mesne profits—Remand.*—Plaintiff No. 1 and defendant No. 1 were brothers. Plaintiff sued defendant for partition of the joint family property. Defendant was in possession of the whole of certain landed property, including plaintiff's share in it Defendant's explanation that he held it for three years as a security for debt due to him from plaintiff was [illegible]

possession. *Held* by the Judicial Committee that the Judicial Commissioner had, under the circum- [illegible]

GANGARAM *v.* SITARAM (P C, 1902)
[6 C. W. N., 698

7.—**Order for sale**—*Partition Act (IV of 1893), s 2—Preliminary decree—Order for sale—Civil Procedure Code (Act XIV of 1882), s 396.*—Where, in a suit for partition, a Commissioner, appointed under s 396, Civil Procedure Code, to make a partition after the preliminary decree had been passed, submitted a report, and the Court on consideration of the report was of opinion that the property could not conveniently be partitioned, and then passed an order for sale of the property under the provisions of s 2 of the Partition Act (IV of 1893): *Held* that the Court could pass an order [illegible]

8.————— *Partition Act (IV of 1893), s 2—Order for delivery of share in house to decree-holder—Application in execution—Order for sale under Partition Act.*—S 2 of the Partition Act [illegible]

9.—**Trees**—*Act XIX of 1873 (N.-W. P. Land-revenue Act), ss. 112, 113, 241 (f)—Trees a proper subject of partition by the Revenue* [illegible]

RAM (F.B., 1901) . . I. L. R., 23 All., 291

PARTITION ACT, 1893 (IV OF 1893).

——s. 2—

See PARTITION—MISCELLANEOUS CASES
[5 C. W. N., 128
I. L. R., 24 Mad., 639

PARTNERSHIP.

See HINDU LAW—

JOINT FAMILY—NATURE OF JOINT FAMILY;
[I. L. R., 25 Mad., 149

DEBTS, AND JOINT FAMILY BUSINESS

See LIMITATION ACT, 1877, SS. 7 AND 8 AND SCH. II, ART. 106.
[I. L. R., 25 Mad., 26

See PARTIES—PARTIES TO SUITS—JOINT FAMILY . . I. L. R., 25 All., 378

See SALE OF GOODS.
[I. L. R., 25 Mad., 580

——decree for dissolution of—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES.
[I. L. R., 27 Bom., 556

See MADRAS ABKARI ACT.
[I. L. R., 24 Mad., 401

——suits respecting partnerships—

See CIVIL PROCEDURE CODE, S. 153.
[I. L. R., 25 Bom., 378

——registration of deed of partnership—

See REGISTRATION ACT (III OF 1877), S. 17, CLS. (*b*) AND (*h*).
[I. L. R., 30 Calc., 1016

1. WHAT CONSTITUTES PARTNERSHIP.

[illegible]

does or does not exist depends on the real intention and agreement of the parties, and not upon the mere fact of participation in profits. *Davis v. Davis* [illegible]

Co.," (the name of the firm), with his own initials or name underneath; that he occasionally signed with his own signature letters dealing with mere matters of detail; and that he purported to make firm offers to buyers and sellers, and initialled alterations in some contracts, *do not constitute him a partner* in that firm. The duties and responsibilities of a broker discussed. MORRISON *v.* VERSCHOYLE (1901)
[6 C. W. N., 429

PARTNERSHIP—*continued.*

2. RIGHTS AND LIABILITIES OF PARTNERS.

2.—Abandonment of share—*Account ordered—Account ordered on dissolution decreed—No abandonment by plaintiff—Effect of managing partner's not having kept clear accounts—Mode of taking account*.—However speculative the subject-matter of a partnership may be, it is a matter of inference, to be drawn from the facts of the case, whether there has or has not been an abandonment by a partner of his share; or loss thereof consequent upon his refusing or neglecting to take his part in the business, and allowing a length of time to elapse,

the management to his co-partner, now defendant. *Held* that there was no sufficient ground for the inference that the plaintiff had abandoned, or lost by laches, his position as a partner before this suit was brought The defendant, on the other hand, while managing partner, had been engaged in dealings in timber peculiar to himself, in the same quarter as the partnership dealings and on a larger scale His agent in the timber district had expended largely,

the partnership, and had not kept clear accounts *Held* that the Courts below acted rightly in disallowing all charges made by the defendant that were disputed by the plaintiff and were unsupported by vouchers, notwithstanding that there might have been certain expenses disallowed which had been honestly incurred. MOUNG THA HUYIN *v* MAH THEIN MYAR (P C, 1900)

[I. L. R., 28 Calc., 53; s.c., 5 C. W. N., 114

3.—Broker—*Liability of principal—Scope of agent's authority*.—The duties and responsibilities of a broker discussed An undertaking by a broker to refund advances made by third parties to his constituents, and giving a guarantee for the repayment

3 SUITS RESPECTING PARTNERSHIPS.

4.—Advances—*Several firms—Common partner—Money lent by partner to his own firm—Practice—Same party cannot be plaintiff and defendant in one suit—Debtor and creditor—Death of plaintiff pending appeal—Defendant becoming plaintiff—Power of Court of Appeal to vary decree on grounds arising subsequently to decree—Partnership accounts—Contract Act (IX of 1872), s. 264—Guarantee—Liability of surety—Right of surety to indemnity*.—Where an individual is a common

PARTNERSHIP—*continued.*

3 SUITS RESPECTING PARTNERSHIPS—*continued.*

partner in two houses of trade, no action can be brought by one house against the other house upon any transaction between them while such individual is a common partner. This doctrine is founded on

decree under appeal, not only for error, but also on grounds which have come into existence since it was

including his son Nagindas (defendant 2), to recover Rs 61,419-3-1 in respect of advances made by the firm of Gordhandas Bhagwandas to the defendants' firm. The fifth defendant was sued as a surety for one of the partners (defendant 4) in the defendants' firm. The lower Court passed a decree for the amount claimed, against all the defendants. One of the

and have passed a decree that one moiety thereof should be paid to Purshotamdas and the other moiety treated as an item to the credit of Nagindas in the partnership accounts; (3) that, although, on

favour of strangers to the partnership. As to the liability of defendant 5 as surety, the Court *held* on

PARTNERSHIP—*continued.*

3. SUITS RESPECTING PARTNERSHIPS—*continued.*

the evidence that defendant 5 had become a surety for the partnership debt. The partners were the principal debtors. But the liability of the surety is co-extensive with that of the principal debtor; therefore no decree could be now passed against defendant 5. Further, Nagindas, now the beneficial owner of the debt, was one of the principal debtors, and as such ...

to repay a

therefore

his surety

SHETH PURSHOTAMDAS CHATURDAS (1901) [I. L. R., 25 Bom., 606

5. ——————— *Two firms—Common partners—Advances by one firm to the other—Suit to recover such advances—Partnership account necessary—Practice—Procedure*—The two plaintiffs were the owners and sole partners of the firm of Apaji Kashinath. They were also partners in the defendant firm of Ganesh Hari Narkar, in which there were three other partners besides themselves ...

Being partners in the firm, the plaintiffs appeared ...

NARKAR (1902) I. L. R., 26 Bom., 739

6.—Joint Hindu family—*Partners—Coparteners not necessarily partners—Suit in the name of the owner of the firm—Parties—Adding parties—Civil Procedure Code (Act XIV of 1882), s. 27*—The plaintiff sued, as owner of a firm, to recover a debt. The defendants pleaded that the plaintiff was joint with his father and brother, and contended that the latter were therefore partners in the firm and ought to be joined as plaintiffs. The ...

further held that it was too late to amend the plaint and to add them as parties, and it therefore dismissed the suit. On second appeal: *Held* (reversing the decree, and remanding the case) that, although a person carrying on business is a coparcener in a joint family, it does not necessarily follow that all his coparceners are his partners in that business, entitled with him to its rights and responsible with

PARTNERSHIP—*concluded.*

3. SUITS RESPECTING PARTNERSHIPS—*concluded.*

...

remand it was found that the plaintiff's father and brother were partners, the Court ought to allow them ... of the plaintiff ...

... (1902) [I. L. R., 27 Bom., 157

DISSOLUTION OF PARTNERSHIP.

7.—*Notice—Acknowledgment of debt by one partner—Indian Contract Act (IX of 1872), ss. 251 and 264—Limitation Act (XV of 1877), s. 21*—The two defendants carried on business under the ...

other of the defendants on behalf of their firm, ...

... The first defendant admitted the claim It appeared that in 1892 the defendants had quarrelled, and by arbitration the presses were divided, the Ahmedabad press being given to the first defendant and the Bombay press to the second defendant At the time of this suit the books and outstandings still remained to be divided. The second defendant now alleged that the partnership had been dissolved in 1892 to the plaintiff's knowledge, and contended that he was not bound by the acknowledgment signed in 1894 by the first defen- ...

business of the partnership (s. 251 of the Contract Act, IX of 1872); and (3) if the partnership had been dissolved at the date of the acknowledgment, then, whether notice of such dissolution had been given, or whether as a matter of fact the plaintiff had notice of ... v. *Dossa* ... 359, distin- ... KALIDAS ... Bom., 42

PASSENGER.

——by rail—

See RAILWAY COMPANY—LIABILITY OF COMPANY . I. L. R., 28 Calc., 401

PATNI TENURE

See BENGAL REGULATION VIII OF 1819, s 9 . . . 7 C W. N., 111

See LIMITATION ACT, 1877, SCH II, ART 29 [I. L. R., 30 Calc., 440

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS. [6 C. W. N., 794

—*Merger of patni interest in zamindar, who purchases it—Ben. Reg. VIII of 1819, sale held under—Transfer of Property Act (IV of 1882),*

PATNIDAR.

——liability of—

See ZAMINDARI DAKS. [I. L. R., 28 Calc., 293

——right of—

See ABATEMENT OF RENT [7 C. W. N., 130

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—PARTIES [7 C. W. N., 377

PATTA.

See POTTAH

PATWARI.

See NORTH-WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS ACT [I. L. R., 23 All., 505

PAUPER SUIT.

See LIMITATION ACT, 1877—

s. 4; [I. L. R., 28 Calc., 427

s 5 [I. L. R., 30 Calc., 790

See TRANSFER OF CIVIL CASE—GENERAL CASES . . I. L. R., 24 All., 356

PAUPER SUIT—*continued.*

1. SUITS.

1.—Court-fees—*Civil Procedure Code (Act XIV of 1882), s 411—Court-fees—First charge on subject-matter of suit—Purchase of portion of subject-matter at sale to recover Court-fees—Subse-*

connection with the pauper suit, and the present

VELOTH ASSENAR (1902) [I. L. R., 25 Mad., 733

2.—Religious Endowments Act (XX of 1863), s. 18—*Suit sanctioned for removal of trustees—Leave to sue in formâ pauperis—Civil Procedure Code (Act XIV of 1882), ss 402, 407.*— The provisions of Ch. XXVI of the Code of Civil Procedure do not preclude a person, who has obtained leave to sue under s 18 of the Religious Endowments Act for the removal of the trustees of a temple, from being permitted to sue *in formâ pauperis* GURUSAMI CHETTI *v* KRISHNASAMI NAIKAR (1901) . . I. L. R., 24 Mad., 419

2 APPEALS

3.—Application for leave to appeal—*Code of Civil Procedure (Act XIV of 1882), ss 401, 592—Presentation of application for leave to appeal in formâ pauperis—Necessity for personal application—Application of rules in Ch XXVI*

stances) by the applicant in person, does not apply to an application under s 592 to be allowed to appeal as a pauper After an application has been presented under s 592, all action taken subsequent to such presentation is, by the terms of s. 592, to be subject to the rules contained in Ch. XXVI of the Code, but the presentation of the application itself is not subject to those rules. *In re Narsi, I L. R., 8 Mad , 504,* not followed. MAILTHI *v.* SOMAPPA BANTA (1902) I. L. R., 26 Mad., 369

4.———————*Letters Patent, High Courts, 1865, cl. 8—Presentation of appeal by a person other than an advocate vakil or attorney of the Court, or a suitor—Presentation by agent of a*

PAUPER SUIT—*concluded.*

2. APPEALS—*concluded.*

pardahnashin woman—Civil Procedure Code, ss. 640, 404, 592.—Where an appeal *in formâ pauperis* by a pardahnashin woman, who had sued as a pauper in the Court of first instance, was presented, not by an advocate, vakil or attorney of [illegible]

5.—Death of plaintiff—*Civil Procedure Code, ss. 401 et seqq.—Suit in formâ pauperis—Decree passed in ignorance of plaintiff's death—Consent order for re-trial—Objection to plaintiff's representative suing in forma pauperis—Estoppel.*—The plaintiff in a suit brought *in formâ pauperis* died, [illegible]

On this appeal an order was passed, by consent of parties, sending back the suit to be re-tried on the merits as between the defendant and the person nominated by him as plaintiff, and it was so [illegible]

[I. L. R., 25 All., 137

6.—Right of appeal—*Civil Procedure Code, ss. 403, 409, 583—Suit in formâ pauperis—Appeal—Propriety of order allowing plaintiff to sue in* [illegible] —Where, [illegible] ive to sue [illegible] s allowed [illegible] and has [illegible] it is not [illegible]

7. ————————*Letters Patent, High Courts, 1865, cl. 15, "Judgment"—Order refusing leave to appeal in formâ pauperis.*—There is no appeal, under cl. 15 of the Letters Patent, against an order, passed by a single Judge, under s 592 of the Code of Civil Procedure, refusing leave to appeal *in formâ pauperis.* By s. 592, a discretion is vested in the Judge to allow or disallow the application, and an order passed in the exercise of such a discretion is not a "judgment" within the meaning of cl. 15 of the Letters Patent. *Sriramulu* v. *Ramasam, I. L. R., 23 Mad., 109; Venkatarama Ayyar* v. *Madalai Ammal, I. L. R., 23 Mad., 169*, and *Srimantu Raja Durga Naidu* v *Srimantu Raja Mallikarjuna Naidu, I. L. R., 24 Mad., 358*, followed. APPASAMI PILLAI v. SOMASUNDRA MUDALIAR (1902)

[I. L. R., 26 Mad., 437

PAWNOR AND PAWNEE.

See LIMITATION ACT, 1877, SCH. II, ART. 57 . . I. L. R., 24 All., 251

PAYMENT.

See INSTALMENTS.

—— **made under forged will**—

See WILL—VALIDITY OF WILL.
[6 C. W. N., 787

——**of whole debt by one debtor**—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

—— **on account of debt**—

See LIMITATION ACT, 1877, s. 20

——**specified time for**—

See LIMITATION ACT, 1877, SCH. II, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES.

PAYMENT INTO COURT.

See BENGAL TENANCY ACT, s 150.
[I. L. R., 30 Calc., 947

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE
[I. L. R., 24 All., 479

— *Civil Procedure Code (Act XIV of 1882),* [illegible]

forego the forfeiture. SAMBASIVA AYYAR v. VYDINADASAMI (1901) . I. L. R., 25 Mad., 535

PAYMENT TO STAY OR SET ASIDE SALE.

See CONTRIBUTION, SUIT FOR—VOLUNTARY PAYMENT.

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

PEACE.

See RECOGNIZANCE TO KEEP PEACE.

PENAL CODE.

——**application of**—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS.
[I. L. R., 25 Bom., 636

CODE—*continued.*

—

See PUBLIC SERVANT. [I. L. R., 28 Calc., 344

ll, cl. *sixth*—

See LANDMARKS [I. L. R., 30 Calc., 1084

—— s. 23—

See CRIMINAL BREACH OF TRUST. [6 C. W. N., 203

—— s. 24—

See CRIMINAL BREACH OF TRUST. [6 C. W. N., 203

—— ss. 24, 25—

See FORGERY . . 5 C. W. N., 897

—— s. 34—

See BENGAL EXCISE ACT (VII OF 1878), s. 53 . . I. L. R., 29 Calc., 496

—— s. 44—

See CRIMINAL INTIMIDATION, [I. L. R., 30 Calc., 418

—— s. 70—

See APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE. [I. L. R., 23 All., 497

—— s. 79—

See WRONGFUL CONFINEMENT. [I. L. R., 30 Calc., 95

—— s. 84—

See INSANITY . I. L. R., 28 Calc., 613

—— ss. 84, 85—

See INSANITY . I. L. R., 29 Calc., 493

—— s. 95—

See CRIMINAL BREACH OF TRUST [I. L. R., 29 Calc., 489

—— ss. 96 to 106—

See PRIVATE DEFENCE, RIGHT OF

See RIOTING . I. L. R., 24 All., 298

—— s. 99—

See ABSCONDING OFFENDER. [I. L. R., 29 Calc., 417

See THUMB IMPRESSIONS [I. L. R., 30 Calc., 97

—— ss. 107, 108, 109—

See CONSPIRACY . I. L. R., 28 Calc., 797

—— s. 109—

See ABETMENT . . 7 C. W. N., 556 [I. L. R., 24 Mad., 523

PENAL CODE—*continued.*

—— s. 109—*concluded.*

See BIGAMY . . 6 C. W. N., 343

See CHARGE—FORM OF CHARGE—FORGERY . . I. L. R., 30 Calc., 822

See CRIMINAL PROCEEDINGS [I. L. R., 28 Calc., 104

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION [I. L. R., 30 Calc., 905

—— s. 114—

See BENGAL EXCISE ACT (VII OF 1878), s. 53 . . I. L. R., 29 Calc., 496

See UNLAWFUL ASSEMBLY. [5 C. W. N., 250

—— s. 141—

See UNLAWFUL ASSEMBLY.

———— *Clause second*—

See WARRANT OF ATTACHMENT. [I. L. R., 29 Calc., 244

—— s. 143—

See post, s. 186 . *I. L. R., 30 Calc., 285*

See ABSCONDING OFFENDER. [I. L. R., 29 Calc., 417

See UNLAWFUL ASSEMBLY. [5 C. W. N., 368 I. L. R., 25 Mad., 624

—— s. 144—

See UNLAWFUL ASSEMBLY. [5 C. W. N., 250 I. L. R., 24 Mad., 124

—— s. 147—

See CRIMINAL PROCEDURE CODE, s. 437. [5 C. W. N., 72

See KIDNAPPING . 6 C. W. N., 208

See POLICE ACT (V OF 1861), ss. 17, 19 [I. L. R., 28 Calc., 411

See PRIVATE DEFENCE, RIGHT OF [I. L. R., 24 All., 143

See RIOTING . . I. L. R., 24 All., 298

See WARRANT OF ATTACHMENT [I. L. R., 29 Calc., 244

—— s. 148—

See HURT—GRIEVOUS HURT [6 C. W. N., 98

See UNLAWFUL ASSEMBLY. [7 C. W. N., 512

—— s. 149—

See CHARGE TO JURY—MISDIRECTION. [I. L. R., 29 Calc., 379

See HURT—GRIEVOUS HURT. [6 C. W. N., 98

PENAL CODE—*continued.*

—— s. 149—*concluded.*

See Police Act (V of 1861) ss. 17, 19.
[I. L. R., 28 Calc., 411

See Unlawful Assembly.
[7 C. W. N., 512

—— s. 150—

See Unlawful Assembly.
[I. L. R., 29 Calc., 214

—— s. 153—

See Religion, Offences relating to
[I. L. R., 26 Mad., 554

—— s. 154—

See Rioting . I. L. R., 28 Calc., 504

—— ss. 154, 155—

See Rioting . . 7 C. W. N., 245

See Sessions Judge, Jurisdiction of—Order for Re-trial on Appeal
[7 C. W. N., 301

—— s. 157—

See Unlawful Assembly.
[I. L. R., 29 Calc., 214

—— s. 161—

See Accomplice . I. L. R., 26 Bom., 193

—— ss. 161, 165—

See Public Servant . 5 C. W. N., 332

—— s. 174—

See Commission—Civil Cases.
[6 C. W. N., 927

See Contempt of Court—Penal Code, s. 174

—— ss. 174, 175—

See Public Servant.
[I. L. R., 29 Calc., 236

—— s. 177—

See Contempt of Court—Penal Code, s 174 . . . 5 C. W. N., 131

—— s. 182—

See Appeal in Criminal Case—Criminal Procedure Code
[I. L. R., 25 All., 534

See False Charge . 5 C. W. N., 727
[I. L. R., 26 Mad., 640

See Sanction for Prosecution—

Power to grant Sanction;
[I. L. R., 27 Bom., 130

Revocation of Sanction.
[I. L. R., 27 Bom., 130

—— s. 183—

See Absconding Offender
[I. L. R., 29 Calc., 417

PENAL CODE—*continued.*

—— s. 183—*concluded.*

See Criminal Procedure Code, s. 476.
[7 C. W. N., 423

See Warrant of Execution.
[5 C. W. N., 391

—— s. 186—

See Public Servant.
[I. L. R., 29 Calc., 236

See Warrant of Execution.
[5 C. W. N., 391

1.—*Survey Act (Ben. Act V of 1875), s. 45*— [illegible]

would not amount to an offence under s 186 of the Penal Code. Moula Bux v. King-Emperor (1901)
[6 C. W. N., 120

2.—*Public servant—Obstruction—Distraint—Crops—Sanction—Unlawful assembly—Bengal Tenancy Act (VIII of 1885), ss. 123 and 126—Criminal Procedure Code (Act V of 1898), ss. 4 and 195—Penal Code (Act XLV of 1860), ss. 143 and 186.*—A peon was ordered by the Civil Court, [illegible]

—— s. 187—

See Public Servant.
[I. L. R., 26 Mad., 419

—— s. 188—

See Nuisance—Under Criminal Procedure Code . . 5 C. W. N., 329

See Public Servant.
[I. L. R., 29 Calc., 236

See Sanction for Prosecution—Where Sanction is necessary, or otherwise.
[I. L. R., 24 Mad., 70

—— s. 193—

See Charge—Form of Charge—False Evidence and *Perjury.*
[I. L. R., 28 Calc., 434

See Criminal Proceedings.
[I. L. R., 24 Mad., 675

See False Evidence.

PENAL CODE—*continued.*

—— s. 194—

See CRIMINAL PROCEEDINGS.
[I. L. R., 24 Mad., 675

—— s. 206—

—*Attachment of crops in execution of certificate under Public Demands Recovery Act—Want of sanction not occasioning failure of justice—Code of Criminal Procedure (Act V of 1898), ss. 195, 438 and 537—Public Demands Recovery Act (Bengal Act I of 1895), ss 7, 8, 19 and 22*—The cutting and carrying off crops, which the accused

the force and effect of a decree of a Civil Court.

—— s. 211—

See FALSE CHARGE.

—— s. 215—

—*Theft—Receiving gratification to help the owner to recover stolen property—S 215 not* [illegible] S. 215 of [illegible] apply to [illegible] in league [illegible] account [illegible] property [illegible] ns in his power to cause the thief to be apprehended and convicted of the offence QUEEN-EMPRESS *v* MUHAMMAD ALI (1900) . I. L. R., 23 All., 81

—— s. 216B—

—*Definition—Meaning of term "harbouring"* *Held*, with regard to the definition contained in s 216B of the Indian Penal Code, that the words "assisting a person in any way to evade apprehension" are meant to point out some method *ejusdem generis* with those specified in the earlier portion of the section They will not include the assisting of an accused person to escape by merely telling lies to the police as to his whereabouts EMPEROR *v.* HUSAIN BAKHSH (1903) . I. L. R., 25 All., 261

—— s. 224—

See ESCAPE FROM CUSTODY

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 C. W. N., 447

—— s. 225—

See JOINDER OF CHARGES
[I. L. R., 29 Calc., 385

PENAL CODE—*continued*

—— s. 225B—

See WARRANT OF ARREST—

CIVIL CASES ; 5 C. W. N., 843
[6 C. W. N., 845

CRIMINAL CASES.
[I. L. R., 28 Calc., 399

—— s. 232—

See COUNTERFEITING COIN.
[I. L. R., 23 All., 420

—— s 268—

See GAMBLING . . 7 C. W. N., 710

—— s. 296—

See RELIGION, OFFENCES RELATING TO.
[I. L. R., 26 Mad., 554

—— s. 298—

See MISCHIEF . I. L. R., 24 All., 155

—— s. 300—

See MURDER.

—— s. 302—

See INSANITY I. L. R., 29 Calc., 493

See MURDER

—— s. 304—

See HURT—GRIEVOUS HURT.
[6 C. W. N., 98

See MURDER

—— s. 317—

See ABANDONMENT OF CHILDREN
[I. L. R., 24 Mad., 682

—— s. 323—

See CRIMINAL PROCEDURE CODE, s 437
[5 C. W. N., 72

—— s. 324—

See UNLAWFUL ASSEMBLY
[7 C. W. N., 512

—— s. 325—

See WARRANT OF ATTACHMENT
[I. L. R., 29 Calc., 244

—— s. 326—

See HURT—GRIEVOUS HURT.
[6 C. W. N., 98

—— s. 336—

See RASH AND NEGLIGENT ACT
[5 C. W. N., 376

—— ss. 339, 341—

See WRONGFUL RESTRAINT

—— s. 342—

See CRIMINAL PROCEDURE CODE, s 437.
[5 C. W. N., 72

See WRONGFUL CONFINEMENT
[I. L. R., 30 Calc., 95

PENAL CODE—*continued.*

—s. 350—

See Criminal Procedure Code, s. 522. [5 C. W. N., 250

See Possession, Order of Criminal Court as to—Dispossession by Criminal Force . I. L. R., 25 All., 341

— s. 351—

See Thumb Impressions. [I. L. R., 30 Calc., 97

—s. 352—

See Assault on Public Servant. [6 C. W. N., 202

—s. 353—

See Assault on Public Servant [6 C. W. N., 202

See Police Act (V of 1861), ss. 17, 19. [I. L. R., 28 Calc., 411.

See Thumb Impressions. [I. L. R., 30 Calc., 97

See Warrant of Arrest—

Civil Cases ; . 5 C. W. N., 843

Criminal Cases 5 C. W. N., 447 [I. L. R., 28 Calc., 399

—ss. 361, 363, 366—

See Kidnapping.

—s. 376—

See Adultery I. L. R., 29 Calc., 415

—ss. 378 to 380—

See Theft.

—s. 390—

See Robbery . . 5 C. W. N., 372

—ss. 395 to 397, 402—

See Dacoity.

—s. 403—

See Criminal Misappropriation. [6 C. W. N., 34

—s. 405—

See Court of Wards . 5 C. W. N., 248

See Criminal Breach of Trust. [6 C. W. N., 203

—s. 406—

See Criminal Breach of Trust. [I. L. R., 28 Calc., 362

See Joinder of Charges. [I. L. R., 24 All., 254

—s. 408—

See Criminal Breach of Trust. [6 C. W. N., 203 I. L. R., 29 Calc., 489

PENAL CODE—*continued.*

—s. 411—

See Charge to Jury—Special Cases—Stolen Property. [I. L. R., 26 Mad., 467

See Criminal Proceedings. [I. L. R., 28 Calc., 104

See Joinder of Charges. [I. L. R., 29 Calc., 387

See Stolen Property, Offences relating to. . I. L. R., 23 All., 266

—s. 414—

See Criminal Proceedings [I. L. R., 28 Calc., 104

—s. 415—

See Cheating . . 5 C. W. N., 255

—s. 417—

See Charge—Form of Charge—Forgery . . I. L. R., 30 Calc., 822

See Forgery . I. L. R., 25 Mad., 726

—s. 420—

See Mischief . I. L. R., 24 All., 155

—s. 422—

[illegible] petitioners mortgaged their property, and under the terms of the agreement certain persons were [illegible] money. The Court, however, made no order on this application The petitioners were convicted of an attempt to commit an offence under s. 422 of the Penal Code. *Held* that, having regard to the relation between the petitioners and their managers, at whose instance the proceedings were taken, it could not properly be said that an attempt to [illegible] to get this money was more to put an end to the management than to prevent the money from being available for payment of their debt under the mortgage. *Nobin Chunder Mudduck (1874), 22 W. R., Cr., 46,* referred to. Hara Kumari Chowdhurani *v.* Savi (1900) [I. L. R., 28 Calc., 314 ; s.c., 5 C. W. N., 174

PENAL CODE—*continued.*

——s. 423—

See FALSE STATEMENT. [I. L. R., 25 All., 31

——s. 424—

1.—*Dishonest removal of property to avoid distraint—Distraint for arrears of rent under the Rent Recovery Act—Absence of presumption in favour of its legality—Onus of proof on prosecution to prove legality—Conviction in absence of such proof—Illegality.*—Where a distraint is made under the Rent Recovery Act for arrears of rent, there is no presumption that it is legally made; and, if persons are charged with having dishonestly removed property to avoid it, the prosecution must prove that it was a legal distraint. In the absence of such proof, persons who have resisted the distraint, or have removed their property to avoid it, cannot be convicted of an offence, inasmuch as they had a right of private defence of their property unless the distraint was legal. KING-EMPEROR *v.* GOPALASAMY (1902) . . . . I. L. R., 25 Mad., 729

2.—*Dishonest removal by tenants of crops—Raiyats holding on varam tenure—Crops in possession of raiyats.—No taking out of possession—Offence.*—If *raiyats* holding land on *varam* tenure remove crops for the purpose of protecting them from injury or damage owing to delay or refusal on the part of the *zamindar* to perform his part in the

——s. 426—

See MISCHIEF

——s. 434—

See LANDMARK I. L. R., 30 Calc., 1084

——ss. 441, 448—

See CRIMINAL TRESPASS [I. L. R., 26 Bom., 558

——s. 457—

See CRIMINAL TRESPASS [I. L. R., 23 All., 82

——ss. 463, 464—

See FORGERY . 6 C. W. N., 382

——s. 466—

See CHARGE—FORM OF CHARGE—FALSE EVIDENCE AND PERJURY. [I. L. R., 28 Calc., 434

See FORGERY . I. L. R., 23 All., 84

PENAL CODE—*continued.*

——s. 467—

See CHARGE—FORM OF CHARGE—FORGERY. . I. L. R., 30 Calc., 822

See FORGERY . . 5 C. W. N., 897 [6 C. W. N., 382

——s. 468—

See FORGERY . I. L. R., 25 Mad., 726

——s. 471—

See CHARGE—FORM OF CHARGE—

FALSE EVIDENCE AND PERJURY; [I. L. R., 28 Calc., 434

FORGERY [I. L. R., 30 Calc., 822

See FORGERY . . 5 C. W. N., 897 [I. L. R., 23 All., 84

——s. 474—

See FORGERY . . 6 C. W. N., 382

——ss. 478, 482—

See TRADE MARK. [I. L. R., 26 Bom., 289

——s. 489C—

See JOINDER OF CHARGES. [I. L. R., 29 Calc., 387

——Ch. XX (*ss. 493 to 498*)—

See ADULTERY . 7 C. W. N., 143

——ss. 494, 495—

See BIGAMY

——s. 497—

See ADULTERY

——s. 498—

See ADULTERY 7 C. W. N., 143

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES [I. L. R., 25 All., 209

—"*Enticing away*" *a woman—Charge of abetment against the woman enticed—Validity.*—Where a man has been convicted of enticing away a woman, under s. 498 of the Penal Code, the woman who was enticed away by him cannot be guilty as an abettor. Whether a woman could be convicted of abetting the taking away of herself, within the meaning of s. 498—*Quære.* IN RE BALAMBAL (1902) [I. L. R., 26 Mad., 463

——s. 499, Expln. I—

See DEFAMATION—IMPUTATION ON A WIFE . . I. L. R., 25 Bom., 151

——ss. 499, 500—

See DEFAMATION

PENAL CODE—*concluded.*

——s. 500—

See Appeal in Criminal Case—Criminal Procedure Code.
[I. L. R., 25 All., 534

See Defamation.
[I. L. R., 26 Mad., 43, 464

See Privileged Communication.
[7 C. W. N., 246

——s. 503—

See Criminal Intimidation
[I. L. R., 30 Calc., 418

——s. 504—

See Mischief . I. L. R., 24 All., 155

——s. 506—

See Criminal Intimidation.
[I. L. R., 30 Calc., 418

——s. 511—

See ante, s. 422 . I. L. R., 28 Calc., 314

See Attempt to Commit Offence
[I. L. R., 23 All., 78
" 25 All., 75

See Charge—Form of Charge—Forgery . . I. L. R., 30 Calc., 822

See Forgery . I. L. R., 25 Mad., 726

PENALTY.

See Interest—Stipulations amounting or not to Penalties.

See Stamp Act (II of 1899), ss. 35 and 42 . . . I. L. R., 24 All., 374

——relief against, in execution proceedings—

See Execution of Decree—Execution of Decree on or after Agreements or Compromises.
[I. L. R., 24 Mad., 265

PENSION.

See Attachment—Subjects of Attachment—Annuity or Pension—Political Pensions.

PENSIONS ACT (XXIII OF 1871).

——ss. 4 and 6—

—*Pension—Right to receive land-revenue granted by Government as a reward —Mortgage of right—. Suit for foreclosure—Certificate of Collector not forthcoming—Procedure.*—S. 4 of the Pensions Act, 1871, applies to a heritable right to receive land-revenue granted by the Government as a reward for services rendered. Where, therefore such a right to receive land revenue was included along with other

PENSIONS ACT (XXIII OF 1871)—*concluded.*

——ss. 4 and 6—*concluded.*

[illegible] the dismissal of the suit *quoad hoc* was sustained. *Jijaji Pratabji Raje* v. *Balkrishna Mahadeo (1892), I. L. R., 17 Bom., 169*, followed. Ihtisham Ali v. Sham Sundar (1902)
[I. L. R., 25 All., 73

—— s. 11—

—*Civil Procedure Code (Act XIV of 1882), s. 266 (g)—Attachment of pensions payable to descendants of reigning family in Ceylon—Pensions payable in British India—Validity of attachment.* [illegible]

These pensions were attached in execution of certain decrees Upon application being made by the pensioners to have the attachments set aside: *Held* that the pensions were exempt from attachment, as being "political pensions" within the meaning of s. 266 (*g*). *Per* Sir Arnold White, *C.J.*—If the [illegible]

enforceable in Ceylon. *Ghamsham Lal* v. *Bhansali, I. L. R., 5 Bom., 249*, and *Bishambhar Nath* v. *Imdad Ali Khan, I. L. R., 18 Calc, 216*, referred to. Muthusami Naidu v. Alagia Manavala Simmala Raja (1902) . I. L. R., 26 Mad., 423

PEON.

See Public Servant.
[I. L. R., 28 Calc., 344

PERJURY.

See False Evidence.

PERMANENT SETTLEMENT.

See Evidence—Civil Cases—Maps
[I. L. R., 30 Calc., 291
7 C. W. N., 849

PERMANENT TENANCY.

See Landlord and Tenant—Nature of Tenancy—Permanent Tenancy.

PERPETUITIES.

See LIFE ESTATE . 5 C. W. N., 569

See MAHOMEDAN LAW—ENDOWMENT. [I. L. R., 30 Calc., 666

PETITION.

——admissibility of, as evidence—

See EVIDENCE CIVIL CASES—MISCELLANEOUS DOCUMENTS—PETITIONS.

PETROLEUM ACT (VIII OF 1899).

—ss. 1 (3), 11 and 15—*Also the repealed Act (XII of 1886), ss 2 (2), 10, 15—Kerosine oil, possession of, exceeding statutory quantity—Notification in Gazette extending repealed Act to Cuttack—New Act not expressly preserving same—General Clauses Act (X of 1897), ss 8, 24, notification preserved by—Fresh notification, if necessary—Notification, if "order."*—The accused had been convicted under ss. 11 and 15 of the Indian Petroleum Act, 1899, for being in possession of 148 tins of kerosine oil at Cuttack, a place to which similar provisions of the Petroleum Act of 1886 had been extended by a notification in the Calcutta Gazette dated 7th April, 1891. *Held* that the notification of 1891 made the present Act applicable to Cuttack, and the conviction was right. That notification has been preserved by the operation of ss 8 and 24 of the General Clauses Act, although the Act of 1886 itself was repealed and there is no provision in the present Act expressly preserving the notifications issued under the provisions of the repealed Act The notification was an "order," [illegible]

PHOTOGRAPHY.

——photographic fac-simile of will attached to probate—

See PROBATE—OF WHAT DOCUMENTS GRANTED I. L. R., 29 Calc., 311

PLAINT.

PLAINT—*continued.*

See COURT-FEES ACT, s 28. [I. L. R., 25 Mad., 380

See MULTIFARIOUSNESS.

See PLEADINGS.

See VARIANCE BETWEEN PLEADING AND PROOF.

—— amendment of—

See APPELLATE COURT—EXERCISE OF POWERS —SPECIAL CASES—PLAINT, AMENDMENT OF.

See BENGAL TENANCY ACT, s. 188. [6 C. W. N., 326

See CIVIL PROCEDURE CODE, s 424 [I. L. R., 30 Calc., 36

—— contents of—

See BENGAL TENANCY ACT, s 149. [7 C. W. N., 615

—— form and contents of; boundaries—

See BENGAL TENANCY ACT, s. 148, CL. (*b*). [5 C. W. N., 121

—— insufficiency of—

See ADMINISTRATION [5 C. W. N., 162

—— prayer for "such other relief as the Court might think fit"—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY [I. L. R., 26 Bom., 136

—— presentation of—

See LIMITATION ACT, 1877, s 4.

——rejection of—

See APPEAL—ORDERS—ORDER REJECTING A PLAINT

See CIVIL PROCEDURE CODE, s. 424. [I. L. R., 25 All., 187

See MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876), s 13 [I. L. R., 25 Bom., 82

——return of—

See APPEAL—ORDERS [I. L. R., 25 All., 174

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TITLE, QUESTION OF. [6 C. W. N., 687

——signature of—

See CIVIL PROCEDURE CODE, s 432. [I. L. R., 25 All., 635

1 GENERAL CONSTRUCTION OF PLEADINGS.

1.—*Pleadings—Reliefs of a nature different from the case made out in the plaint*.—No declaration ought to be granted where the case upon which

PLAINT—*continued*

1. GENERAL CONSTRUCTION OF PLEADINGS—*concluded.*

the declaration is sought to be obtained not only is not the case made in the plaint but is one that is wholly inconsistent with it. *Eshen Chunder Singh v Shama Churn Bhutto (1866), 11 M. I. A., 7,* referred to. RAI JATINDRA NATH CHAUDHURI v. AMRITA LAL BAGCHI (1900) . 5 C. W. N., 20

2 FORM AND CONTENTS OF PLAINT.

(*a*) CAUSE OF ACTION.

2.—**Multifariousness.**—A plaintiff's cause of action is every fact which a plaintiff must prove to support his case. A cause of action arises when a legal right is infringed, and the date and place of its accrual must be inserted in the plaint. Where the plaintiff claimed the ownership of the properties in suit through her late husband, and [illegible]

Held that there were separate causes of action against separate sets of persons, and the trial could not proceed as upon a single cause of action. RAM PROSAD v SACHI DASSI (1902) . 6 C. W. N., 585

(*b*) FRAME OF SUITS GENERALLY.

3.—*Limitation Act (XV of 1877), Sch. II, Art. 116—"Contract in writing, registered," signed by one party thereto—Sufficient disclosure of cause of action.*—During the course of certain litigation in which *B* was suing *A* on a promissory note, a compromise was arrived at under which *A* undertook to execute a mortgage in favour of *B*, and, in consideration thereof, *B* undertook to withdraw an appeal which was pending at the time. The mortgage was executed, and the undertaking to withdraw the appeal was embodied in the mortgage deed, which was registered, but signed only by *A*. *B*, in breach of his undertaking, permitted the appeal to proceed, and obtained a decree on 20th November, 1891, which he subsequently executed against *A*, recovering the value of the promissory note upon which he had originally sued. He also retained the mortgage which had been executed in the compromise. *A* now sued to recover from *B* the amount which *B* had collected under the decree, stating the cause of action as having arisen on the date of that collection, namely, 29th October, 1893, when it was contended that the suit was not maintainable inasmuch as the decree had not been set aside, and that, even if treated as a suit for damages for breach of the undertaking to withdraw the appeal, it was barred, as the date of the breach was the date of the decree (*viz*, 20th November, 1891), which had been wrongly obtained, and this suit had not been brought within three years from that date, the plaint having been filed on 14th September, 1896. *Held* that, inasmuch as all necessary allegations were made in the plaint, the contract and its breach being alleged, and as the defendant understood what the claim against him was, the plaint sufficiently disclosed a cause of action for damages for the breach of contract. *Held, also,* that the undertaking in the mortgage was "an agreement in writing, registered", within the meaning of Art. 116 of Sch. II to the Limitation Act, and that consequently the claim was not barred. The fact that the instrument was not signed by *B* did not take the case out of the operation of that article. KOTAPPA v. VALLUR ZAMINDAR (1901) . . . . I. L. R., 25 Mad., 50

3 VERIFICATION AND SIGNATURE.

4.—**Verification**—*Civil Procedure Code (Act XIV of 1882)* [illegible] *Corporation—* [illegible] *effect of, on* [illegible] Bank of Beng[illegible] as the Officiating Inspector of Branches, Bank of Bengal, and there was nothing to show that he was not the officer authorised to sue or verify the petition on behalf of the Bank at Chittagong, or that he was not able to depose to the facts of the case: *Held* that the petition was properly verified under s. 435, Civil Procedure Code. Defective verification, if there is no reason to suppose that anyone is [illegible] OF AKYAB (1900) . . . 5 C. W. N., 91

5.——————— *Foreign Corporation, suit by—Foreign Company not registered under the Indian Companies Act, 1882—Plaint, verification of, by the Manager of an unregistered Company* [illegible] out being registered under the Indian Companies Act, 1882, or an Act of Parliament; and a plaint in such a suit can be verified on behalf of the Corporation by one of its principal officers, under s. 435 of the Code of Civil Procedure. A Corporation duly created according to the law of one State may sue and be sued in its corporate name in the Courts of other States. *Campbell v. Jackson (1885), I. L. R., 12 Calc., 41,* and *Yusuf Beg v. The Board of Foreign Missions of the Presbyterian Church of New York (1894), I. L. R., 16 All., 420,* distinguished. SINGER MANUFACTURING COY. v. BAIJNATH (1902) . . I. L. R., 30 Calc., 103

4. AMENDMENT OF PLAINT.

6.—*Civil Procedure Code, s. 53—Suit on a mortgage for sale or "any other relief to which the plaintiff might be entitled"—Subsequent*

PLAINT—*continued*

4. AMENDMENT OF PLAINT—*concluded*

prayer for money decree, relinquishing claim for sale—The plaintiff, a mortgagee, came into Court asking for a decree for a sale on his mortgage, or "any other relief to which the plaintiff might be entitled." The mortgage sued upon contained the usual covenant for payment, in addition to the further covenant that in default of payment proceedings might be taken against the mortgaged property.

of the pleadings did not amount to a conversion of the suit into a suit of another and inconsistent character. SUKHDEO PRASAD *v.* LACHMAN SINGH (1902) . . . . I. L. R., 24 All., 456

7.—*Mistake—Limitation—Power of Receiver to sue—Limitation Act (XV of 1877), s. 19—Acknowledgment of liability*—By an order of the Court, the plaintiff was appointed Receiver in a certain suit, with authority to sue for and recover an attached debt. Through some mistake in the office of the attorneys of the plaintiff in that suit, the money sought to be attached was wrongly described in the Tabular Statement as money due under the agreement of the 25th October, 1895, whereas it should have been the agreement of the 26th August 1895; and the Court, acting on this representation, made the order, which applied to the alleged agreement of the 26th October, 1895. On application to amend the order and the plaint, or in the alternative to read the existing order as if it were in reality applicable to the right agreement: *Held* that no order for amending the plaint or the order could be made, the amendment of the order would operate only as a new order, taking effect from the date on which it is made, and could not therefore operate as the basis or authority for the present suit. The plaintiff's authority to maintain this suit depends solely upon the order appointing him Receiver: if it has been made under any mistake, it cannot by any course of construction be regarded as applying to anything other than the subject-matter specified by the order itself, the intention of the parties being immaterial. *Way v. Hearn (1862), 13 C. B. (N.S.), 292, 304*, distinguished. In order to satisfy the requirements of s. 19 of the Limitation Act, though a promise to pay need not be made out, it is necessary when the right claimed is a debt that an unequivocal and unqualified admission of the debt or a part of it, or of the subsisting relationship of

can be allowed to take advantage of any ground of exemption from the ordinary law of limitation which has not been pleaded in the plaint. BENODE BEHARI MOOKERJEE *v.* RAJ NARAIN MITTER (1903) [I. L. R., 30 Calc., 699; s.c., 7 C. W. N., 651

PLAINT—*continued.*

5. REJECTION OF PLAINT.

8.—*Limitation—Civil Procedure Code, s. 54.*—When a Court fixes a time under cl. (*a*) or (*b*) of s. 54 of the Code of Civil Procedure, it must be a time within limitation, and s. 54 does not give a

9.—*Civil Procedure Code (Act XIV of 1882), s. 54, cl. (c)—Plaint, when may be rejected.*—Where the plaintiff sued to establish a *mul raiyati* right which by a Government order was not granted, and also sought for the position of a *mustagir* and to set aside the executive orders of the Commissioner and the Deputy Commissioner, and the lower Courts rejected the plaint under s. 54 of the Civil Procedure Code: *Held* that, upon the allegations made in the plaint, the suit ought to have been tried, and the plaint could not be rejected on the ground of the suit being barred by any positive rule of law. NAWAB SINGH *v.* CHABAN RANA (1901) [6 C. W. N., 411

10.—*Act VII of 1870 (Court-fees Act), ss. 7, cls. 5 and 6 (c), 28—Suit undervalued—Power to extend time for payment of deficiency in Court-fee—Civil Procedure Code, s. 54—Limitation*—A suit for pre-emption of *zamindari* property was filed one day before the expiry of the prescribed period of limitation. The plaint stated the profits of the property to be R8-4-0, and should therefore have borne Court-fee stamps to the amount of the proper Court-fee on R123-12-0; but

the Court found that R8-4-0 was the correct amount of profits, disallowing the plaintiff's application to be allowed to reduce the amount of profits stated in

no power to extend the time for making up the deficiency in the Court-fee beyond the expiry of the prescribed period of limitation, and the plaint was rightly rejected. MUHAMMAD AHMAD *v.* MUHAMMAD SIRAJUDDIN (1901) . I. L. R., 23 All., 423

6. PROCEDURE.

11.—*Jurisdiction—Allegation in plaint believed to have been falsely made in order to avoid jurisdiction of Small Cause Court—Procedure by Court*—Where an allegation is made in a plaint, which appears to a Court of first instance to be false and to have been made for the purpose of

PLAINT—*continued.*

1. GENERAL CONSTRUCTION OF PLEADINGS—*concluded.*

the declaration is sought to be obtained not only is not the case made in the plaint but is one that is wholly inconsistent with it. *Eshen Chunder Singh v. Shama Churn Bhutto (1866), 11 M. I. A., 7,* referred to. RAI JATINDRA NATH CHAUDHURI *v.* AMRITA LAL BAGCHI (1900) . 5 C. W. N., 20

2. FORM AND CONTENTS OF PLAINT.

(*a*) CAUSE OF ACTION.

[illegible]

not proceed as upon a single cause of action RAM PROSAD *v.* SACHI DASSI (1902) . 6 C. W. N., 585

(*b*) FRAME OF SUITS GENERALLY.

3.—*Limitation Act (XV of 1877), Sch. II, Art. 116—"Contract in writing, registered," signed by one party thereto—Sufficient disclosure of cause of action*—During the course of certain litigation in which *B* was suing *A* on a promissory note, a compromise was arrived at under which *A* undertook to execute a mortgage in favour of *B*, and, in consideration thereof, *B* undertook to withdraw an appeal which was pending at the time. The mortgage was executed, and the undertaking to withdraw the appeal was embodied in the mortgage deed, which was registered, but signed only by *A*. *B*, in breach of his undertaking, permitted the appeal to proceed, and obtained a decree on 20th November, 1891, which he subsequently executed against *A*, recovering the value of the promissory note upon which he had originally sued. He also retained the mortgage which had been executed in the compromise. *A* now sued to recover from *B* the amount which *B* had collected under the decree, stating the cause of action as having arisen on the date of that collection, namely, 29th October, 1893, when it was contended that the suit was not maintainable inasmuch as the decree had not been set aside, and that, even if treated as a suit for damages for breach of the undertaking to withdraw the appeal, it was barred, as the date of the breach was the date of the decree (*viz.*, 20th November, 1891), which had been wrongly obtained, and this suit had not been brought within three years from that date, the plaint having been filed on 14th September, 1896. *Held* that, inasmuch as all necessary allegations were made in the plaint, the contract and its breach being alleged, and as the defendant understood what

PLAINT—*continued.*

2. FORM AND CONTENTS OF PLAINT—*concluded.*

(*b*) FRAME OF SUITS GENERALLY—*concluded.*

the claim against him was, the plaint sufficiently disclosed a cause of action for damages for the breach of contract. *Held, also,* that the undertaking in the mortgage was "an agreement in writing, registered", within the meaning of Art. 116 of Sch. II to the Limitation Act, and that consequently the claim was not barred. The fact that the instrument was not signed by *B* did not take the case out of the operation of that article. KOTAPPA *v.* VALLUR ZAMINDAR (1901) . . . . I. L. R., 25 Mad., 50

3. VERIFICATION AND SIGNATURE

4.—**Verification**—*Civil Procedure Code (Act XIV of 1882), s. 435—Verification on behalf of a Corporation—Defective verification of plaint, effect of, on appeal.*—Where a petition by the Bank of Bengal was verified by a person described as the Officiating Inspector of Branches, Bank of Bengal, and there was nothing to show that he was not the officer authorised to sue or verify the petition on behalf of the Bank at Chittagong, or that he was not able to depose to the facts of the case: *Held* that the petition was properly verified under s. 435, Civil Procedure Code. Defective verification, if there is no reason to suppose that anyone is prejudiced thereby, is no ground, at an appellate stage, either for returning the plaint for amendment or for refusing relief on the basis of the alleged defect in the plaint *Rajit Ram v. Katesar Nath (1896), I. L. R., 18 All., 396,* and *Basdeo v. John Smidt and others (1890), I. L. R., 22 All., 55,* followed. RAM KOMAL SAHA *v.* BANK OF BENGAL OF AKYAB (1900) . . . 5 C. W. N., 91

5.————— *Foreign Corporation, suit by—Foreign Company not registered under the Indian Companies Act, 1882—Plaint, verification of, by the Manager of an unregistered Company—Civil Procedure Code (Act XIV of 1882), ss. 430, 435—Indian Companies Act (VI of 1882),*

[illegible]

4. AMENDMENT OF PLAINT.

6.—*Civil Procedure Code, s. 53—Suit on a mortgage for sale or "any other relief to which the plaintiff might be entitled"—Subsequent*

PLAINT—*continued.*

4. AMENDMENT OF PLAINT—*concluded.*

prayer for money decree, relinquishing claim for sale—The plaintiff, a mortgagee, came into Court asking for a decree for a sale on his mortgage, or "any other relief to which the plaintiff might be entitled" The mortgage sued upon contained the usual covenant for payment, in addition to the further covenant that in default of payment proceedings might be taken against the mortgaged property.

of the pleadings did not amount to a conversion of the suit into a suit of another and inconsistent character. SUKHDEO PRASAD *v* LACHMAN SINGH (1902) . . . . I. L. R., 24 All., 456

7.—*Mistake—Limitation—Power of Receiver to sue—Limitation Act (XV of 1877), s 19—Acknowledgment of liability*—By an order of the Court, the plaintiff was appointed Receiver in a certain suit, with authority to sue for and recover an attached debt. Through some mistake in the office of the attorneys of the plaintiff in that suit, the money sought to be attached was wrongly described in the Tabular Statement as money due under the agreement of the 25th October, 1895, whereas it should have been the agreement of the 26th August 1895; and the Court, acting on this representation, made the order, which applied to the alleged agreement of the 26th October, 1895 On application to amend the order and the plaint, or in the alternative to read the existing order as if it were in reality applicable to the right agreement· *Held* that no order for amending the plaint or the order could be made; the amendment of the order would operate only as a new order, taking effect from the date on which it is made, and could not therefore operate as the basis or authority for the present suit The plaintiff's authority to maintain this suit depends solely upon the order appointing him Receiver· if it has been made under any mistake, it cannot by any course of construction be regarded as applying ... ter specified ... parties being ... *13 C. B.* ... er to satisfy ... itation Act, though a promise to pay need not be made out, it is necessary when the right claimed is a debt that an unequivocal and unqualified admission of the debt or a part of it, or of the subsisting relationship of

can be allowed to take advantage of any ground of exemption from the ordinary law of limitation which has not been pleaded in the plaint. BENODE BEHARI MOOKERJEE *v* RAJ NARAIN MITTER (1903) [I. L. R., 30 Calc., 699; S.C., 7 C. W. N., 651

PLAINT—*continued.*

5. REJECTION OF PLAINT.

8.—*Limitation—Civil Procedure Code, s. 54.*—When a Court fixes a time under cl. (*a*) or (*b*) of s 54 of the Code of Civil Procedure, it must be a time within limitation, and s 54 does not give a

9.—*Civil Procedure Code (Act XIV of 1882), s 54, cl. (c)—Plaint, when may be rejected.*—Where the plaintiff sued to establish a *mal-raiyati* right which by a Government order was not granted, and also sought for the position of a *mustagir* and to set aside the executive orders of the Commissioner and the Deputy Commissioner, and the lower Courts rejected the plaint under s. 54 of the Civil Procedure Code: *Held* that, upon the allegations made

10.—*Act VII of 1870 (Court-fees Act), ss. 7, cls. 5 and 6 (c), 28—Suit undervalued—Power to extend time for payment of deficiency in Court-fee—Civil Procedure Code, s 54—Limitation*—A suit for pre-emption of *zamindari* property was filed one day before the expiry of the prescribed period of limitation The plaint stated the profits of the property to be R8-4-0, and should therefore have borne Court-fee stamps to the amount of the proper Court-fee on R123-12-0; but

6. PROCEDURE.

11.—*Jurisdiction—Allegation in plaint believed to have been falsely made in order to avoid jurisdiction of Small Cause Court—Procedure by Court*—Where an allegation is made in a plaint, which appears to a Court of first instance to be false and to have been made for the purpose of

PLAINT—*concluded.*

6. PROCEDURE—*concluded.*

avoiding the jurisdiction of the Small Cause Court, the plaintiff may be required to satisfy the Court that the allegation is *bonâ fide* and not merely colourable in order to change the venue. APPA RAO *v.* SOBHANADRI RAO (1899)
[I. L. R., 24 Mad., 158

PLAINTIFF.

See MISJOINDER I. L. R., 26 Mad., 647

See PARTIES—
ADDING PARTIES TO SUITS—PLAINTIFFS;
SUBSTITUTION OF PARTIES—PLAINTIFFS.

——death of—

See CIVIL PROCEDURE CODE, s. 424.
[I. L. R., 25 All., 187

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS I. L. R., 27 Bom., 162
[I. L. R., 26 Mad., 224

A declaration affecting the plaintiff in a suit which is dismissed is not legal. CHHOTU MAHTON *v.* SHTOBARTI KOER (1901) . . 5 C. W. N., 445

PLEADER.

——authority of—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.
[7 C. W. N., 343

——misconduct of—

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), ss. 13 AND 14
[5 C. W. N., 45, 48
I. L. R., 24 Mad., 17

——suit against representative of deceased—

See LIMITATION ACT, 1877, SCH. II, ART. 120 . . I. L. R., 25 All., 55

1. APPOINTMENT AND APPEARANCE.

1.—*Vakalatnama, acceptance of, in writing, by pleader not necessary.*—*Per* BANERJEE, J.—The appointment of a pleader must be in writing and filed in Court, but his acceptance of the *vakalatnama* need not be in writing. SHAMA PROSAD GHOSE *v.* TAKI MULLIK (1901) . . . 5 C. W. N., 816

PLEADER—*continued.*

2. AUTHORITY OF, TO BIND CLIENT.

2.—*Powers of Vakil—Abandonment of issue as to impartibility—Practice—Issue as to limitation.*—A vakil's general powers in the conduct of a suit include the abandonment of an issue which, in his discretion, he thinks it inadvisable to press. So *held*, [illegible] so to do. BOMMADEVERA VENKATA NARASIMHA NAIDU *v.* BOMMADEVERA BHASHYAKARLU NAIDU (1902) . . . L. R., 29 I. A., 76:
[s.c. I. L. R., 25 Mad., 367; 6 C. W. N., 641

3.—*Oral admission.*—Where the *mukhtear* of one of the parties in a proceeding under s. 145, Code of Criminal Procedure, orally denied their claim to the disputed land, though no such denial had been made in their written statements: *Held* that admission by the legal practitioner conducting the case was sufficient in a *quasi*-civil proceeding of this nature, and the Magistrate was justified in passing an order in favour of the other party: the fact that such admission was not recorded did not invalidate the order. HARO MOHAN SARDAR *v.* GOBIND SAHU (1902) . . . . . 7 C. W. N., 351

3. REMUNERATION.

4.—*Legal Practitioners' Act (XVIII of 1879), s. 27, rules of the High Court made under—S. 28—Suit by pleader for fees, where no agreement—Division of fees amongst several pleaders engaged in the case.*—S. 28 of the Legal Practitioners' Act has no application where a pleader sues his client for his fees on account of work done by him as his pleader, although there may not be any agreement between the parties as to the fees that should be paid. Where more than one pleader is employed, the fees allowable under the rules framed by the High Court under s. 27 of the Act are to be equally divided amongst the several pleaders engaged in the case. SARAT CHANDRA ROY CHOWDRY *v.* CHANDI CHARAN MITRA (1902) . . 7 C. W. N., 300

5.—*Civil Rules of Practice—Rule 282—Rules* [illegible] *Legal Practitioners Act (XVIII of* [illegible] subject-matter of the claim does not admit of valuation," within the meaning of Rule 35 of the Rules framed under the Legal Practitioners Act. Such a suit falls within Rule 31, and the fee to be allowed to a *vakil* engaged therein is limited to a sum not exceeding the maximum fee allowable in a suit for the possession of the same property. ACHUTA BHATTA *v.* MANJUNATHAYYA (F.B., 1903)
[I. L. R., 26 Mad., 654

4. REMOVAL, SUSPENSION AND DISMISSAL.

6.—*Legal Practitioners Act (XVIII of 1879), ss. 13, 14, 40—Suspension from practice*

PLEADER—*continued.*

4. REMOVAL, SUSPENSION AND DISMISSAL —*concluded.*

without opportunity to defend—Two charges were, on 30th December, 1899, framed by a District Judge against a pleader, under s 14 of the Legal Practitioners Act, and it was directed that they should be heard on 24th January, 1900. On the day on which the charges were framed, namely, 30th December,

[illegible]

order suspending the pleader was irregular, and must be set aside IN THE MATTER OF A SECOND-GRADE PLEADER (1900) . . I. L. R., 24 Mad., 83

7.—*Legal Practitioners Act (XVIII of 1879), s. 13—"Other reasonable cause" for suspending a pleader—Writing an anonymous letter to influence*

[illegible]

A PLEADER (1902) . . I. L. R., 26 Mad., 448

[illegible]

Held that the pleader had acted in a grossly improper manner in the discharge of his professional duties. IN THE MATTER OF PURNA CHANDRA DUTT (1903) . . . . 7 C. W. N., 373

5. PROFESSIONAL CONDUCT.

9.—*Disciplinary jurisdiction—Pleader making use in later proceedings against A of information obtained by him in an earlier case in which A was his client.*—With regard to its disciplinary jurisdiction over pleaders, the High Court of Bombay will follow the rule laid down by BLACKBURN, J, in the case of *Re Cutts (1867), 16 L T. (N S), 715*, which was as follows: "Those things which an attorney earns from his client, or in consequence of his employment by his client, he is forbidden to disclose, and any betrayal of his confidence would be visited by the Court as gross misconduct But if he learns matters relating to his client under such circum-

[illegible]

regulate their professional behaviour. It serves only to indicate the extreme low-water mark of professional conduct. DAMODAR VENKATESH *v.* BHAVANISHANKAR MANGESH (F B., 1902)
[I. L. R., 26 Bom., 423

PLEADER—*concluded.*

5. PROFESSIONAL CONDUCT—*concluded*

PLEADERSHIP EXAMINATION.

See BOARD OF EXAMINERS
[I. L. R., 28 Calc., 479

PLEADINGS.

See HINDU LAW—MAINTENANCE—WIDOW . . I. L. R., 27 Bom., 485

See PLAINT.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
[5 C. W. N., 515

See VARIANCE BETWEEN PLEADING AND PROOF.

See WRITTEN STATEMENT.

——defamatory statement in—

See DEFAMATION . . 5 C. W. N., 293

—*Limitation—Alternative plea of limitation*

[illegible]

POLICE.

——application of Criminal Procedure Code to police in Calcutta—

See CRIMINAL PROCEDURE CODE
[7 C. W. N., 661

POLICE ACT (XLVIII OF 1860).

——ss. 11, 12—

—*License—Eating-house—Commissioner of Police—Discretion to refuse license—Construction—Specific Relief Act (I of 1877), s. 45*—The petitioner applied to the Commissioner of Police of

[illegible]

POSSESSION—*continued.*

—— suits for—*concluded.*

See BENGAL TENANCY ACT—*concluded.*

ss. 101 TO 111A; [I. L. R., 28 Calc., 28

s. 184 AND SCH. III. [I. L. R., 28 Calc., 86

See CO-SHARER—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY.

See HINDU LAW—JOINT FAMILY—SUITS FOR POSSESSION.

See LANDLORD AND TENANT—TRANSFER BY TENANT . 6 C. W. N., 919

See LIMITATION ACT, 1877, SCH. II—

ART. 9; . 7 C. W. N., 218

ART. 14; [I. L. R., 29 Calc., 367

ART. 47; [I. L. R., 25 Bom., 82

ART. 91; . 6 C. W. N., 863

ARTS. 120 AND 144; [I. L. R., 26 Mad., 113

ARTS. 136 TO 138 AND 144; [I. L. R., 25 Bom., 275

ART. 139; [I. L. R., 25 Mad., 452

ART. 141; [I. L. R., 25 All., 435

ART. 144.

See MAMLATDAR, JURISDICTION OF. [I. L. R., 26 Bom., 353

See MORTGAGE—CONSTRUCTION. [L. R., 30 I. A., 54

See PARTIES—PARTIES TO SUITS—

MORTGAGES, SUITS CONCERNING; [7 C. W. N., 11

RECEIVER . 5 C. W. N., 27

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE. [I. L. R., 27 Bom., 302

See RIGHT OF SUIT—POSSESSION, SUIT FOR.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES [I. L. R., 29 Calc., 682

See SPECIFIC RELIEF ACT, s. 9.

See TITLE—MISCELLANEOUS CASES. [I. L. R., 25 Mad., 448

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASE—POSSESSION, SUIT FOR.

1. EVIDENCE OF POSSESSION.

1.—*Presumption—Evidence of possession of certain specific property treated as evidence of*

POSSESSION—*continued.*

1. EVIDENCE OF POSSESSION—*concluded.*

possession as regards an appendage to such property, though no definite acts of possession were proved as regards the appendage—Limitation. —Where, on the right to the produce of certain [illegible] that the [illegible] as to the [illegible] indicating directly their possession of the trees, but that the trees nevertheless grew out of a wall which [illegible]

2. NATURE OF POSSESSION.

2.—*Decree of Civil Court—Magistrate, duty of—Code of Criminal Procedure (Act V of 1898).* [illegible] decree had already been put in possession of the property in dispute. *Doulat Koer* v. *Rameswari Koeri* (1899), *I. L. R., 26 Calc. 625,* referred to. KUNJA BEHARI DAS *v.* KHETRA PAL SING (1901) [I. L. R., 29 Calc., 208 ; s c., 6 C. W. N., 38

3. SUITS FOR POSSESSION.

3.—**Effect of previous suit**—*Previous suit on the basis of possession without title, dismissal of—Dispossession by plaintiff in the previous suit—Previous decree, effect of—Title, want of, of plaintiff in subsequent suit.*—Defendants brought a suit in 1886 for a declaration of their title and to recover possession of the lands in suit against the plaintiff. The suit was dismissed, defendants having failed in that suit to prove their title. Defendants subsequently dispossessed the plaintiff in 1890; and plaintiff instituted the present suit in 1896 but could not prove his title. *Held* that the effect of the decree in the previous suit was to declare, as against the present defendants, that plaintiff's possession was lawful; and, such being the case, and the defendants being wrong-doers and having no title, the plaintiff in the present suit, on the basis of the decree in the previous suit and his previous lawful possession, is entitled to recover possession if the lands are the same. *Nisa Chand*

POSSESSION—*continued.*

3. SUITS FOR POSSESSION—*continued.*

Gaita & ors. v. *Kanchiram Bagani (1899), 3 C. W. N., 568; Gobind Chunder Kondoo & ors.* v. *Taruk Chunder Bose & ors. (1877), I.L.R., 3 Calc. 145; Ismail Ariff* v. *Mahomed Ghous (1893), I. L. R., 20 Calc., 834*, distinguished. FAZLAR RAHMAN CHOWDHRY *v.* RAJ CHUNDER SEN (1900)

[5 C. W. N., 234

4.—**Limitation**—*Limitation Act (XV of 1877), Sch. II, Art. 116—Breach of contract in writing registered—Lease of villages—Failure by lessee to put lessor in possession—Executory contract to deliver such possession as the nature of the property admits—Mere execution of lease of villages not a delivery of possession*.—By a registered document, dated 11th November, 1893, defendant leased certain villages to plaintiff for a term of seven years and eight months On 5th December, 1893, plaintiff applied to be put into pos-

...

Both in the case of a sale and of a lease, the registered instrument by which such sale or lease is effected not only operates as a grant, but, in the absence of a contract to the contrary, is also construed and operates as an executory contract to deliver to the vendee or lessee such possession of the property as its nature permits; and the breach of such an obligation is a breach of a contract in writing registered, within the meaning of the article referred to It was also contended by the defendant that, inasmuch as the *raiyats* were in actual occupa- ... the subject-matter ... y the mere ... n plaintiff ... the lease ... e collected the rents without any further act on the part of the defendant *Held* that possession had not been given ZAMINDAR OF VIZIANAGRAM *v* BEHARA SURYANARAYANA PATRULU (1901)

[I. L. R., 25 Mad., 587

5.—**Mortgage**—*Mortgage of non-transferable occupancy holding—Objection of landlord that* ... *Subsequent suit for* ...

... upon the mortgage against the mortgagor, the occupancy *raiyat*, the landlords, who objected that the holding was not transferable, were made parties in the mortgage suit. The Court declined to decide this question, and passed a decree for the sale of the property, which, being sold, was purchased by the plaintiff, who, not being able to obtain possession, brought the present suit for recovery of possession. *Held* that the objection of the landlord defendants that the holding was not transferable could be gone into in the present suit, and that s 244, Civil Procedure Code, was no bar to the determination of the question, as it was made by the defendants in the suit *Bhiram Ali Sheikh* v. *Gopi Kant Saha (1897), I. L. R., 24 Calc., 355*; and *Nil Kamal Mukerjee* v. *Jahnhabi Chowdhurani (1899), I. L. R., 26 Calc., 946*, relied upon. DURGA CHARAN AGRADANI *v.* KARAMAT KHAN (1903)

[7 C. W. N., 607

POSSESSION—*concluded.*

3. SUITS FOR POSSESSION—*concluded.*

6.—**Possession as title**—*Specific Relief Act (I of 1877) Amendment Act (XII of 1891), s. 9—Possession as title against all but true owner—Effect of Specific Relief Act even where suit is brought more than six months after dispossession.*—Possession is, under the Indian, as under the English, law, good title against all but the true ...

... section, is entitled to be reinstated, even if the defendant by whom he was dispossessed be the true owner or a person authorized by or claiming under him. But a decree passed in such a suit will not have the force of *res judicata* on the question of title *Nisa Chand Gaita* v *Kanchiram Bagani, I L R, 26 Calc, 579*, dissented from. NARAYANA ROW *v* DHARMACHAR (1902)

[I. L. R., 26 Mad., 514

4 EFFECT OF POSSESSION.

7.—*Nature of interest in immovable property acquired by virtue of mere possession.*—A person in possession of land without title has an interest in the property which is heritable and good against all the world except the true owner – an interest which, unless and until the true owner interferes, is capable of being disposed of by deed or will, or by execution sale, just in the same way as it could be dealt with if the title were unimpeachable. *Asher* v. *Whitlock* ...

POSSESSION, ORDER OF CRIMINAL COURT AS TO.

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.
I. L. R., 29 Calc., 724

See LIMITATION ACT, 1877, SCH. II, ART. 174 . I. L. R., 28 Calc., 86

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . 7 C. W. N., 142

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.
I. L. R., 25 All., 537

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R., 26 Mad., 471

—— attachment of property—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION.
[illegible] 5 C. W. N., 105, 710

—— jurisdiction of Civil Court to interfere with—

See MAMLATDAR, JURISDICTION OF.
I. L. R., 26 Bom., 353

—— local inquiry—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS
5 C. W. N., 686

—— parties to proceedings—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC.
5 C. W. N., 67

See RECEIVER.
I. L. R., 30 Calc., 593

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION.

1.—Dispute as to possession of lands—*Code of Criminal Procedure (Act V of 1898),*

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*continued.*

ss. 145, 146—Joint possession—Attachment of land and crops—Jurisdiction.—Where two rival *zamindars* claimed to hold certain alluvial lands, and where it was admitted that they were joint-proprietors of *mauza G*, but the question also in dispute was whether those lands belonged to *mauza G* or to [illegible] action under s 145, Criminal Procedure Code. *Held, also,* that, there being no dispute between the tenants *inter se*, the order of the Magistrate as to the attachment of the crops on the land, which belonged to the tenant who grew them, was a bad order for want of jurisdiction, and must be set aside. DENOMONI CHOWDHRANI *v* MOZAFAR ALI KHAN (1900) . 5 C. W. N., 105

2. ———— *Criminal Procedure Code (Act V of 1898), s 145—Joint property—Definite piece of land in dispute—Jurisdiction.*—Where a dispute related to a definite plot of land, but the question was whether this plot was included in a piece of land which was in the exclusive possession of one of the parties, or in another which was the [illegible] undivided share in land, or rent or profit issuing from an undivided share, because in such a case the subject-matter of the dispute is uncertain and its boundaries undefined, and s 145, Code of Criminal Procedure, only contemplates disputes as to the possession of definite pieces of land or the rents and profits issuing from definite pieces of land. *Tarujan Bibee v. Asamuddi Depari (1900), 4 C. W. N., 426; Kristo Alhadini Dasi v. Radha Syam Panday (1902), 7 C. W. N., 118; Surb Narain Singh v. Birj Mohan Thakur (1895), I. L. R., 23 Calc., 80,* explained. *Quare*—whether an order by a Magis- [illegible] 145, [illegible] MOHAN GHOSE *v.* RAJENDRA CHANDRA GHOSH (1903)
7 C. W. N., 462

3. ———— *Criminal Procedure Code (Act V of 1898), s. 145—Dispute as to possession of land—Civil suit brought by one party to recover possession from the other how it affects Magistrate's jurisdiction—Duty of Magistrate to ascertain land in dispute—Order passed in respect of lands in excess of those referred to in the proceedings, if proper.*—Under s. 145, Code of Criminal Procedure

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

1 CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*continued.*

a Magistrate has power to intervene and pass a temporary order in regard to the possession of the land in dispute, only until one or other of the parties applies for or obtains a determination of his rights in a Civil Court. Where one of the parties, by bringing a civil suit for recovery of possession, has admitted

Procedure. If he still considers it necessary that steps should be taken to preserve the peace, it is open to him to take proceedings under provisions of law other than s. 145, Code of Criminal Procedure He has no jurisdiction to proceed under s 145, Code of Criminal Procedure When, in a proceeding under s. 145, Code of Criminal Procedure, a question is raised as to the identity of the land in dispute, the Magistrate is bound, before going further, to ascertain and identify the lands, so that neither party may be in doubt as to the specific lands in respect of which proceedings are taken. A Magistrate has no jurisdiction to decide a dispute as to the lands in excess of those referred to in his proceedings AMBIIESHWARI DEBI *v* DARPA NARAIN DAS (1903) [7 C. W. N., 558

4.—Evidence of possession—*Criminal Procedure Code (Act V of 1898), s. 145—Order passed* ex parte—*Evidence, necessity of taking.*—A Magistrate can proceed *ex parte* in a proceeding under s. 145, Code of Criminal Procedure. But it is not competent for him to pass an order in favour of the party present, without some evidence that such party is in possession. RAM KRISTA PATRA *v* AGHORE NASKAR (1902) . . 6 C. W. N., 925

5.—"Subject-matter of dispute"—*Criminal Procedure Code (Act V of 1898), ss. 145, 146—"Subject-matter of dispute," meaning of; whether it refers to whole subject-matter or to component parts—Magistrate, jurisdiction of, to make an order under s. 145 in regard to some, and an order under s 146 in regard to the remaining, plots—Separate and distinct subject-matter—D*

refers to the whole or to any component part or parts thereof. If that component part is distinct and

dispute is indivisible and must be dealt with as a whole, it must be dealt with in such a way as to make, in regard to it, one order under either s. 145 or s. 146 of the Code, as the circumstances may require. *Katras Jherriah Coal Company v Sib Krishta Daw & Co (1894), I. L. R., 22 Calc., 297,* explained and distinguished. *Rakhal Dass Singh and another v. Sheo Pershad Singh (1875), 24 W. R., Cr., 73,* referred to *Per* TAYLOR, J.—In this case each separate plot may be regarded as a

2 LIKELIHOOD OF BREACH OF THE PEACE.

6—Dispute as to possession—*Criminal Procedure Code (Act V of 1898), ss. 107, 145—Dispute as to land—Security to keep the peace, order for—Procedure.*—Where a dispute, which is likely to cause a breach of the peace, relates to the possession of land, the Magistrate should proceed under s. 145, Code of Criminal Procedure, and not under s. 107. Where, in such a case, proceedings were drawn up under s. 107, Code of Criminal Procedure, and only one of the parties was bound down to keep the peace, the order was set aside as bad. *Dole Gobind Chowdry v. Dhanu Khan (1897), I. L. R., 25 Calc., 559,* followed. BIDHU BHUSAN CHATTERJI *v.* ANNODA CHURN KANANGUI (1902) . . . . . 6 C. W. N., 883

7.——————*Criminal Procedure Code (Act V of 1898), ss 107, 145, 146—Possession of immovable property, dispute as to—Order requiring security for keeping the peace, if proper—Procedure*—When the apprehension of a breach of the peace is found to be contingent upon an

8.—Grounds for action of Magistrate—*Immovable property, dispute as to—Order of*

ings under s. 145 of the Code of Criminal Procedure should set out the grounds on which he is

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

See Appeal in Criminal Cases—Criminal Procedure Code [I. L. R., 29 Calc., 724

See Limitation Act, 1877, Sch. II, Art. 174 . I. L. R., 28 Calc., 86

See Nuisance—Under Criminal Procedure Code . . 7 C. W. N., 142

See Revision—Criminal Cases—Miscellaneous Cases. [I. L. R., 25 All., 537

See Security for Good Behaviour. [I. L. R., 26 Mad., 471

—— attachment of property—

See Possession, Order of Criminal Court as to—Cases in which Magistrate can decide as to Possession. [5 C. W. N., 105, 710

—— jurisdiction of Civil Court to interfere with—

See Mamlatdar, Jurisdiction of. [I. L. R., 26 Bom., 353

—— local inquiry—

See Possession, Order of Criminal Court as to—Transfer or Withdrawal of Proceedings [5 C. W. N., 686

—— parties to proceedings—

See Possession, Order of Criminal Court as to—Disputes as to Right of Way, Water, etc. [5 C. W. N., 67

See Receiver. [I. L. R., 30 Calc., 593

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION.

1.—Dispute as to possession of lands—*Code of Criminal Procedure (Act V of 1898),*

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*continued.*

ss. 145, 146—Joint possession—Attachment of land and crops—Jurisdiction.—Where two rival *zamindars* claimed to hold certain alluvial lands, and where it was admitted that they were joint-proprietors of *mauza G*, but the question also in dispute was whether those lands belonged to *mauza G* or to *mauza N*, one of the parties claiming that if they belonged to *N* he had absolute right in it, and the Magistrate, in a proceeding under s 145, Criminal Procedure Code, passed an order under s 146, [illegible]

[illegible] order for want of jurisdiction, and must be set aside. Denomoni Chowdhrani *v* Mozafar Ali Khan (1900) . . . . 5 C. W. N., 105

2. ———— *Criminal Procedure Code (Act V of 1898), s 145—Joint property—Definite piece of land in dispute—Jurisdiction.*—Where a dispute related to a definite plot of land, but the question was whether this plot was included in a piece of land which was in the exclusive possession of one of the parties, or in another which was the joint property of both the parties in dispute: *Held* that the Magistrate had jurisdiction to proceed under s. 145, Code of Criminal Procedure. A Magistrate cannot proceed under s 145, Code of Criminal Procedure, where the disputed property is itself an undivided share in land, or rent or profit issuing from an undivided share, because in such a case the subject-matter of the dispute is uncertain and its boundaries undefined, and s. 145, Code of Criminal Procedure, only contemplates disputes as to the possession of definite pieces of land or the rents and [illegible]

3. ———— *Criminal Procedure Code (Act V of 1898), s 145—Dispute as to possession of land—Civil suit brought by one party to recover possession from the other how it affects Magistrate's jurisdiction—Duty of Magistrate to ascertain land in dispute—Order passed in respect of lands in excess of those referred to in the proceedings, if proper.*—Under s. 145, Code of Criminal Procedure

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*continued.*

a Magistrate has power to intervene and pass a tempor- [illegible]

[illegible] civil suit for recovery of possession, has admitted that the other party are in possession, there is no [illegible]

[illegible]

Magistrate is bound, before going further, to ascertain and identify the lands, so that neither party may be in doubt as to the specific lands in respect of which proceedings are taken. A Magis- [illegible]

4.—**Evidence of possession**—*Criminal Procedure Code (Act V of 1898), s. 145—Order passed* ex parte—*Evidence, necessity of taking.*—A Magistrate can proceed *ex parte* in a proceeding under s. 145, Code of Criminal Procedure. But it is not competent for him to pass an order in favour of the party present, without some evidence that such party is in possession. RAM KRISTA PATRA *v* AGHORE NASKAR (1902) . . 6 C. W. N., 925

5.—**"Subject-matter of dispute"**—*Criminal Procedure Code (Act V of 1898), ss 145, 146—"Subject-matter of dispute," meaning of, whether it refers to whole subject-matter or to component parts—Magistrate, jurisdiction of, to make an order under s 145 in regard to some, and an order under s. 146 in regard to the remaining, plots—Separate and distinct subject-matter—Divisibility of subject-matter—One proceeding in regard to several plots—Irregularity—Prejudice.*—The expression "subject-matter of dispute," used in ss. 145 and 146 of the Code of Criminal Procedure, refers to the whole or to any component part or parts thereof. If that component part is distinct and [illegible]

[illegible] require. *Katras Jherriah Coal Company* v. *Sib Krishta Daw & Co (1891), I. L. R., 23 Calc., 297,* explained and distinguished. *Rakhal Dass Singh and another* v *Sheo Pershad Singh (1875), 24 W. R., Cr, 73,* referred to. *Per* TAYLOR, J.—In this case each separate plot may be regarded as a separate subject-matter of dispute, and in that case, [illegible]

[illegible] *der Chowdhry* v. *Ambica Churn* [illegible] *ajumdar (1901), 5 C. W. N., 544,* relied upon. BADAR ALI *v.* ABDUL KARIM (1901) . . . 5 C. W. N., 710

2. LIKELIHOOD OF BREACH OF THE PEACE.

6.—**Dispute as to possession**—*Criminal Procedure Code (Act V of 1898), ss. 107, 145—Dispute as to land—Security to keep the peace, order for—Procedure.*—Where a dispute, which is [illegible] es to the [illegible] proceed [illegible] and not [illegible] roceedings were drawn up under s. 107, Code of Criminal Procedure, and only one of the parties was bound down to keep the peace, the order was set aside as bad. *Dole Gobind Chowdry* v *Dhanu Khan (1897), I. L. R., 25 Calc., 559,* followed. BIDHU BHUSAN CHATTERJI *v.* ANNODA CHURN KANANGUI (1902) . . . . . 6 C. W. N., 883

7.———*Criminal Procedure Code (Act V of 1898), ss 107, 145, 146—Possession of immovable property, dispute as to—Order requiring security for keeping the peace, if proper—Procedure.*—When the apprehension of a breach of the peace is found to be contingent upon an attempt by either of the parties in dispute to exercise [illegible] of land, the [illegible] 5, 146, Code [illegible] nder s. 107. [illegible] W. N., 29

8.—**Grounds for action of Magistrate**—*Immovable property, dispute as to—order of Magistrate, contents of—Breach of the peace—Opportunity to produce evidence—Sessions Judge, power of revision or reference—High Court, powers of—Code of Criminal Procedure (Act V of 1898), ss. 145 and 435—Charter Act (24 & 25 Vict, c 104), s 15.*—Proceedings under Chapter XII of the Code of Criminal Procedure are not proceedings with regard to which a Sessions Judge has any power of revision or reference, nor has he the power to call for the records in such proceedings. The High Court only can interfere, under the power of sup [illegible] Act. [illegible] ings [illegible] Proced [illegible]

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE PEACE —*continued.*

satisfied that a dispute likely to cause a breach of the peace existed, and the parties to the proceedings should be given an opportunity of adducing their evidence. JAGOMOHAN PAL *v.* RAM KUMAR GOPE (1901) . . . . I. L. R., 28 Calc., 416

9. ———— *Jurisdiction—Code of Criminal Procedure (Act V of 1898), s. 145—High Court—Non-joinder of necessary parties—Subordinate Criminal Courts—Circumstances under which they have jurisdiction.*—The High [illegible] special circumstances and for a special purpose. When the special circumstances do not exist, [illegible] give rise to an apprehension of a breach of the peace, and, if there is no apprehension of a breach of the peace, there is no jurisdiction to make the order. The purpose the Legislature had in view was the prevention of a breach of the peace. If that object is not attained by an order purporting to be made under s. 145, it must be taken to have been without jurisdiction. ANESH MOLLAH *v.* EJAHARUDDI MOLLAH (1901) . . I. L. R., 28 Calc., 446; [s.c., 5 C. W. N., 428

10. ———— *Criminal Procedure Code (Act V of 1898), s. 145—Dispute as to possession of land—Inquiry by Magistrate before institution of proceedings—Source of information, if to be stated in order starting proceedings—Reason for making such statement.*—The object of drawing up a proceeding prior to the issue of notice under s. 145, Code of Criminal Procedure, can only be to [illegible] held an inquiry in the presence of the parties, and satisfied himself by that inquiry that there was a likelihood of a breach of the peace, and thereupon made an order directing the institution of the proceedings: *Held* that the proceedings were not invalid merely because the Magistrate in his order did not state the source of his information, the parties having already become aware of that in the course of the inquiry. *Manik v. Azimuddi (1902), 6 C. W. N., 923; Mohesh Sowar v. Narain Bae (1900), I. L. R., 27 Calc., 981,* referred to and distinguished. SAHID MONDUL *v.* LAKSHMI MONDUL (1902) . . . . . 7 C. W. N., 509

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE PEACE —*continued.*

11.—**Initiation of proceedings**—*Recording of order under s. 145 (1), Criminal Procedure Code.* [illegible] sub-s. (1) [illegible] necessary, to [illegible] proceedings [illegible] state the information upon which the Magistrate has reason to suppose that a breach of the peace is probable or imminent. MANIK *v.* AZIMUDDI (1902) [6 C. W. N., 923

12. ———— *Jurisdiction—Criminal Procedure Code (Act V of 1898), ss. 107, 145—Proceedings under s. 145 of the Code, initiation of—Security for keeping the peace.*—The making of a formal order under sub-s. (1) of s. 145 of the Criminal Procedure Code is absolutely necessary, to give the Magistrate jurisdiction to initiate proceedings under that section. Where a notice was issued on the parties, under s. 107 of the Criminal [illegible] and that the order was entirely bad. SUKRU DOSADH *v.* RAM PERGASH SINGH (1902) [I. L. R., 30 Calc., 443; s.c., 7 C. W. N., 174

13.—**Stay of proceedings**—*Jurisdiction—Criminal Procedure Code (Act V of 1898), s. 145—Magistrate, power of, to stay proceedings and cancel order passed by him under sub-s. (1)—Revision—High Court, interference by.*—A Magistrate has jurisdiction to cancel an order passed under sub-s. (1) of s. 145 of the Criminal Procedure Code and to stay proceedings if he becomes satisfied, [illegible] to. *Hurbullubh Narain Singh v. Luchmeswar Prosad Singh (1898), I. L. R., 26 Calc., 188,* distinguished. MANINDRA CHANDRA NANDI *v.* BARADA KANTA CHOWDHRY (1902) [I. L. R., 30 Calc., 113; s.c., 6 C. W. N., 417

14.—**Successive police reports**—*Procedure—Criminal Procedure Code (Act V of 1898)*

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE BEACE —*concluded*

s. 145—Possession of immoveable property, dispute as to—Irregularity of proceedings.—When proceedings taken under s. 145 on a police report, which was defective in not showing the boundaries of the lands in dispute, were dropped, and fresh proceedings were instituted on a later report which did not state that there was any apprehension of a breach of the peace, and the Magistrate in his judgment referred to both reports: *Held* that only the latter report, [illegible]

3 PARTIES TO PROCEEDINGS.

15.—Addition of parties—*Criminal Procedure Code (Act V of 1898), s. 145—Dispute as to possession of land—Parties, adding of—Previous proceeding—New proceeding with new* [illegible]

mentioned in the first paragraph of s. 145 of the Code, is in actual possession A Magistrate is entitled to allow a third party to come in in the course of the proceeding only for the purpose of showing that no dispute likely to cause a breach of the peace [illegible] whether such third [illegible] roceeding. A [illegible] recording the [illegible] der the first [illegible] course of the investigation, any new party as concerned in the dispute. *Protab Narayan Sing* v. *Rajendro* [illegible] *Janaki Nath* [illegible]

should be declared to be in possession on the date of the subsequent proceeding. BENI SINGH *v.* UMRAO MAHTO (1900) . . . 5 C. W. N., 900

16. ———— *Jurisdiction—"Parties concerned in such dispute," meaning of—Addition of parties during proceedings, effect of—Fresh proceedings, if necessary—Omission to add necessary parties—Dispute as to separate plots of land—Separate proceedings, if necessary—Criminal Procedure Code (Act V of 1898), s. 145*—Proceedings under s. 145 of the Criminal Procedure Code are not without jurisdiction because

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

3. PARTIES TO PROCEEDINGS—*continued.*

the Magistrate on information before him has made parties thereto only those actually in dispute and [illegible]

claiming possession in some way of the lands or a portion of the lands in dispute has not been made a party, he not being one of the parties in the dispute likely to cause a breach of the peace, so far as appeared to the Magistrate; such [illegible]

17.—Manager—*Criminal Procedure Code (Act V of 1898), s. 145—Order in favour of the manager of the proprietors of an indigo concern—Jurisdiction.*—An order under s. 145 of the Criminal Procedure Code was passed in favour of the manager, who was an employee of the proprietors of an indigo concern. *Held* that the order was without jurisdiction JHABU SINGH *v.* RUTHERFORD (1902)
[7 C. W. N., 208

18.—Manager or agent—*Criminal Procedure Code (Act V of 1898), s. 145—Dispute as to possession of land—Manager or agent, if order can be made in favour of—Possession—Actual possession—Possession as proprietor.*—There is jurisdiction in the Court under s. 145, Code of Criminal Procedure, to make an order in favour of a person who claims to be in possession of the disputed land as agent to, or manager for, the proprietors, when the actual proprietors are not residents within the appellate jurisdiction of the High Court. *Jhabu Singh* v *Rutherfood (1902), 7 C. W. N., 208,* overruled. DHONDHAI SINGH *v.* FOLLET (1903)
[7 C. W. N., 825

19.—Necessary parties—*Criminal Procedure Code (Act V of 1898), s. 145—Object of*

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

3. PARTIES TO PROCEEDINGS—*continued.*

the section—Magistrate, duty of, to ascertain necessary parties—Necessary parties, omission of, to bring in, whether vitiates proceeding—Jurisdiction of Magistrate—Names of parties disclosed in written statements and police-report—Persons interested in, or interested in claiming, possession of land, and person alleged to be in de facto possession of portion of land, whether necessary parties—The principal object which a proceeding under s. 145, Criminal Procedure Code, aims at is the prevention of a breach of the peace, and such object cannot be achieved if persons who are interested in, or at any rate interested in claiming, possession of the land in dispute, and persons who are alleged to be in *de facto* possession of a por- [illegible]

[illegible]

[6 C. W. N., 101

20.————————*Criminal Procedure Code (Act V of 1898), s. 145—Claims made by two sets of tenants—Parties, necessary—Landlords, if necessary parties—Omission to make them parties, if it vitiate proceedings—Separate plots of lands—Separate proceedings if absolutely necessary—Jurisdiction.*—Where, in a proceeding under s. 145, Criminal Procedure Code, two sets of tenants who claimed possession of the disputed lands were made parties and their landlords were not, though the latter were persons interested in the dispute, still, when they had never moved in the matter themselves, an objection as to want of necessary parties, made by the tenants, was considered not *bonâ fide*, and was not entertained. Although it may be desirable, in proceedings under s. 145, Criminal Procedure Code, to deal with each separate dispute separately, it is impossible to apply to such proceedings the strict rule of procedure which has to be observed in civil actions. *Kutubul Singh v. Uma Singh (1887), I. L. R., 15 Calc., 81; Abhayessari Debi v. Shidhessari Debi* [illegible]

[illegible]

21.—**Persons disclaiming interest**—*Criminal Procedure Code (Act V of 1898), s 145—Order in favour of persons, some of whom disclaim all interest in subject-matter of dispute, if legal—Jurisdiction.*—An order under s. 145 of the Criminal Procedure Code, made in favour of four persons, two of whom claim no interest in the property in dispute, is not warranted by law, and is bad for want of jurisdiction. RAMESWAR PERSAD NARAIN SINGH *v.* HARBANS SINGH (1901) . . . . 6 C. W. N., 104

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

3. PARTIES TO PROCEEDINGS—*concluded.*

4 NOTICE TO PARTIES.

22.—*Criminal Procedure Code (Act V of 1898), s. 145—Possession, dispute relating to—Notice to party of place of trial to be given in sufficient time to enable him to produce evidence—Magistrate moving about from place to place.*—In a proceeding under s. 145, Code of Criminal Procedure, the second party failed to ascertain where the Magistrate, who had been moving about from place to place, was holding his camp, and so failed to procure the attendance of his witnesses at the trial: *Held* that an order passed by the Magistrate, directing the first party to continue in possession, was bad, inasmuch as the second party had no notice of the place of trial in sufficient time to procure the attendance of his witnesses. KALI NATH MISTRI *v.* ABHOY BEPARI (1903)
[7 C. W. N., 705

5. EVIDENCE, MODE OF TAKING, ETC.

23.—*Criminal Procedure Code (Act V of 1898), ss. 145, 537—Proceeding in respect of several plots of lands—Separate proceedings, if necessary—Prejudice.*—Where a Magistrate drew up one proceeding in respect of several plots of land claimed to be in the possession of different persons, and the parties were not prejudiced by the Magistrate not taking separate proceedings but dealing with the matter in one and the same proceeding; and where the course taken by the Magistrate did not preclude any of the parties from adducing evidence in the case concerning the different plots of land: *Held* that the procedure taken by the Magistrate did not vitiate the inquiry or the order made therein. ISWAR CHUNDER CHOWDHRY *v.* AMBICA CHURN MAJUMDAR (1901)
[6 C. W. N., 544

24.—*Criminal Procedure Code (Act V of 1898), s. 145—Case given up by one side—Oral admission by mooktear, if sufficient—Recording of the same, if indispensable.*—Although it is ordinarily necessary to record evidence in a case under s. 145, Code of Criminal Procedure, before passing final orders, it is not indispensable to do so when the case is completely given up by one side. Where the *mooktear* of one of the parties in a proceeding under s. 145, Code of Criminal Procedure, orally denied their claim to the disputed land, though no such denial had been made in their written statements: *Held* that admission by the legal practitioner conducting the case was sufficient in a *quasi*-civil proceeding of this nature, and the Magistrate was justified in passing an order in favour of the other party;

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

5. EVIDENCE, MODE OF TAKING, ETC.—*concluded.*

the fact that such admission was not recorded did not invalidate the order. HARO MOHAN SARDAR *v.* GOBIND SAHU (1902) . . 7 C. W. N., 351

6. DECISION OF MAGISTRATE AS TO POSSESSION.

25.—**Arbitration**—*Criminal Procedure Code (Act V of 1898), s. 145—Possession, dispute as to—Arbitration, reference to—Magistrate's jurisdiction.*—The parties to a proceeding under s. 145, Code of Criminal Procedure, asked to refer their dispute to an arbitrator, who was to decide which of them was in possession. The Magistrate consented, and, pending the decision of the arbitrator, attached the properties in dispute, under s. 146, Code of Criminal Procedure. On an award being made by the arbitrator, deciding the question of actual possession: *Held* that the Magistrate ought to take the finding of the arbitrator as to [illegible] in bringing [illegible] TARAMONI [illegible] CHAUDHURI [illegible] W. N., 461

26.—**Attendance of parties**—*Code of Criminal Procedure (Act V of 1898), ss. 145, 438—Summary finding of possession by Magistrate in proceeding under s. 145—Written statement in such proceeding, proof of—Warrant, issue of, for attendance of parties, legality of—Sessions Judge, power of, on application for redress of irregularity under s. 145, to report to High* [illegible] pass an order declaring possession with the party who has filed a written statement, without taking evidence in proof of such statement. He has no jurisdiction to issue a warrant to compel the attendance of a party in such proceeding. On application to the Sessions Judge for redress against such illegality, he should report the matter, under s. 438 of the Code, for orders of the High Court, if he is of opinion that the order is illegal and without jurisdiction. KEFATULLAH *v.* FERUZUDDIN MIAH (1900) . . . . 5 C. W. N., 71

27.—**Claim of undivided share**—*Criminal Procedure Code (Act V of 1898), s. 146—Decree of Civil Court—Jurisdiction.* The 1st party obtained a decree against the mother of the 2nd party, in a suit in which the 2nd party were also defendants; the 1st party purchased the property at the sale held in execution of the decree, and obtained possession thereof through the Civil Court. The 2nd party not being the debtors, the sale certificate, which originally contained their names, was subsequently amended by those names being struck off. The Magistrate found that the 2nd party now claimed an undivided share, and

POSSESSION, ORDER OF [illegible] COURT AS TO—*continued.*

6. DECISION OF MAGISTRATE AS TO POSSESSION—*continued.*

passed an order under s. 146, Code of [illegible] Procedure. *Held* that, if the claim of [illegible] party was to an undivided share, the order of the Magistrate was wrong, inasmuch as s. 145 contemplates a dispute between two parties, each of whom asserts the right to hold actual possession of the property as against the other, and not a dispute between parties claiming to hold joint possession [illegible] the 1st party as established by the Civil Court. *S. Gordon Sims v. Joharry Lal* (1900) 5 C. W. N., 563, followed. KRISTA ALHADINI DASI *v.* RADHA SYAM PANDAY (1902) . 7 C. W. N., [illegible]

28.—**Joint family**—*Criminal Procedure Code (Act V of 1898), ss. 145, 146—Decree against member of joint family—Possession granted of whole property to auction-purchaser—Dispute as to possession between other members of the joint family and the auction-purchaser—Jurisdiction of Magistrate to adjudicate upon rights of parties—Possession by Civil Court, effect of.*—Where, in execution of a decree against a member of a joint *Mitakshara* family, possession of the whole property was given to an auction-purchaser thereof: *Held* that, in a proceeding under s. 145, Criminal Procedure Code, between the other members of the joint family and the auction-purchaser, it is not open to the Court to adjudicate upon the rights of the parties and to decide that the auction-purchaser was entitled to possession of only the share of the judgment-debtor. For the purposes of that section, it is sufficient [illegible] MAHBOLAL BITHUL GAYAWAL *v.* JUG LAL SINGH (1902) [6 C. W. N., 841

29.—**Specification of land**—*Criminal Procedure Code (Act V of 1898), s. 145—Dispute as to land—Specification of land, if and when necessary—Civil Court decree for possession—Decree, effect of—Magistrate, duty of—Procedure.*—Although, in a proceeding under s. 145, Criminal Procedure Code, the disputed land should be thoroughly ascertained by both parties, yet, where the parties were not at issue upon the question as to what the disputed lands were, and neither the Court nor anybody concerned in the dispute was under any misapprehension as to that point, there is no ground for holding that the Magistrate who tried the case had no jurisdiction to make an order under the section for want of proper specification of the lands in dispute. The duty of a Criminal Court,

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

6. DECISION OF MAGISTRATE AS TO POSSESSION—*concluded.*

in a case under s. 145, Criminal Procedure Code, where there is a decree of a Civil Court for possession in respect of the disputed land, is to find which party held such Civil Court decree, and then to maintain that party in possession; it is not necessary that such decree should be a decree for possession as between the parties to the proceeding under s. 145, Criminal Procedure Code. *Daulat Koer* v. *Rameswari Koeri (1899), I. L. R., 26 Calc., 625,* followed. GORDON SIMS *v.* JOHURRY LAL (1901) . . . . . 5 C. W. N., 563

30.—Transfer of case—*Criminal Procedure Code (Act V of 1898), ss. 145 and 526—Criminal case—Bias of Judge—Magistrate's powers under s. 145—Breach of peace—Right of the parties.*—The [illegible]

[illegible] "criminal case", within the meaning of s. 526 of the Code. A criminal case means a case arising out of, and dealing with, some crime already committed. It does not include proceedings taken for the prevention of crime. Under s. 145 of the Code, a Magistrate is not at liberty to go into the merits of the claims, of any of the parties to the dispute, to a *right* to possess the subject thereof. He can decide only the fact of possession at the date of the order requiring the parties to put in their statements. The parties cannot be called upon to furnish a statement of their rights, nor can the Magistrate take, as the basis of any action he may finally decide upon, any conclusion at which he may arrive, or at which he may have arrived, as to the respective titles of the parties. IN RE PANDURANG GOVIND PUJARI (1900)

[I. L. R., 25 Bom., 179

7. ATTACHMENT OF PROPERTY.

31.—Crops—*Jurisdiction—Attachment of "crops" cut and stored—"Crops or other produce of land," meaning of—Criminal Procedure Code (Act V of 1898), ss. 145 and 146.*—The words "crops or other produce of land", in sub-s. (2) of s. 145 of the Criminal Procedure Code, mean crops or other produce of land attached to the land. A Magistrate therefore has no jurisdiction, under s. 146 of the Code, to attach crops which have been severed from the land and stored. RAMZAN ALI *v.* JANARDHAN SINGH (1902)

[I. L. R., 30 Calc., 110; s.c., 6 C. W. N., 881

32.————————*Criminal Procedure Code (Act V of 1898), s. 145—Suit in Civil Court, dismissal—Finding as to title—Order of Magistrate giving possession—Jurisdiction—Jurisdiction of High Court.*—In a proceeding under s. 145, Code of Criminal Procedure, crops growing on the land in dispute were cut by the Magistrate's order, sold, and the

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

7. ATTACHMENT OF PROPERTY—*concluded.*

money deposited in Court. One of the parties then [illegible] and there was no cause of action against the defendant. Upon this finding, the Magistrate ordered the deposit to be made over to the plaintiff: *Held* that, as in passing this order the Magistrate was not exercising any judicial power, no question of his jurisdiction arose, and the High Court could not interfere. ANNADA PERSAD PAL *v.* KHODA BOX MALLIK (1902)

[6 C. W. N., 882

8. TRANSFER OR WITHDRAWAL OF PROCEEDINGS.

33.—Transfer—*Criminal Procedure Code (Act V of 1898), ss. 145, 148, 192, sub-s. (2), 528, 529 (f), 530 (j)—Transfer of case under s. 145 by District Magistrate to another Magistrate, to try it himself or make it over to another—Valid or invalid transfer—Jurisdiction, local—Prejudice—Local inquiry by trying Magistrate.*—In a proceeding under s. 145, Criminal Procedure Code, the second party moved the District Magistrate for the transfer of [illegible]

[illegible] petent to try the case, provided that he was vested with the powers of a proper class; and that the order made by him would not, on that account, be bad. S. 530 (j) refers to a case where a Magistrate is not competent, by virtue of the position he holds or powers vested in him, to try a case of the character referred to in s. 145, Criminal Procedure Code. S. 148, Criminal Procedure Code, does not necessarily imply that the Magistrate, before whom the case is, may not himself hold the local inquiry provided for in the section. Any mistake made erroneously and in good faith by one Magistrate in transferring a case under s. 145, Criminal Procedure Code, to another, under s. 192, is cured by the provisions of s. 529 (f). RAJ MOHAN ROY CHOWDHURY *v.* PROSUNNO CHANDRA CHATTERJI (1901)

[5 C. W. N., 686

9. STRIKING OFF PROCEEDINGS.

34.—*Recording of order under s. 145, Criminal Procedure Code—Revival of proceedings—Fresh materials, if to be recorded.*—Where proceedings taken under s. 145, Code of Criminal Procedure, have been struck off, and it is intended

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

9. STRIKING OFF PROCEEDINGS—*continued.*

to take fresh proceedings upon new materials, it is necessary for the Magistrate to record such new materials in his order renewing the proceedings. *Tarini Churn Chowdhry v Amulya Ratan Roy (1893), I L R, 20 Calc, 867,* followed. Where

[illegible] C. W. N., [illegible]

10 DISPUTES AS TO RIGHT OF WAY, WATER, ETC.

35.—Jalkar—*Criminal Procedure Code (Act V*

[6 C. W. N., 161

36.—Right of way—*Code of Criminal Procedure (Act V of 1898), s 147—Easement, right*

[illegible] C. W. N., [illegible]

37.—Water—*Code of Criminal Procedure (Act V of 1898), s. 147—Construction and meaning of the section—Comparison of the language used in s. 147 of Act V of 1898, s. 147 of Act X of 1882 and s. 532 of Act X of 1872—Previous law bearing on the subject—Meaning of the term "such thing*

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

10. DISPUTES AS TO RIGHT OF WAY, WATER, ETC—*concluded*

Criminal Procedure Code, legality of.—Where it was found that the first party had a right to the flow of water for purposes of irrigation from a certain channel passing through the village of the second

first party have proved an uninterrupted user of water of the channel for twenty years, which they

the proviso to s. 147, Criminal Procedure Code. PASUPATI NATH BOSE *v* NANDO LAL BOSE (1900) [5 C. W. N., 67

11. DISPOSSESSION BY CRIMINAL FORCE.

by a summary order, to restore the state of things

case of eviction under an order under s. 522, must seek his remedy in the Civil Court. *Narayan Govind v. Visaji (1898), I L R, 23 Bom, 494,* referred to and explained. RAMESWAR MARWARI *v.* BISWA NATH BANERJEE (1900) 5 C. W. N., 374

39. ———— *Code of Criminal Procedure (Act V of 1898), s. 522—Order for restoration of possession of immoveable property—Conviction of accused on charge of criminal trespass—No finding of use of criminal force Legality of order for restoration.*—Certain persons

POSSESSION, ORDER OF CRIMINAL COURT AS TO —*concluded*

11. DISPOSSESSION BY CRIMINAL FORCE —*concluded.*

the accused to restore possession of the land. On a [illegible]

jurisdiction. BATAKALA POTTIAVADU (1902)
[I. L. R., 26 Mad., 49

40. ———— *Criminal Procedure Code, s 522—Act XLV of 1860 (Indian Penal Code), s. 350—Restoration of possession of immovable property—Use of criminal force.*—To support an order under s. 522 of the Code of Criminal Procedure, restoring possession of immovable property, it is necessary for the Court to find as a fact, not only that the person in whose favour such order is made was deprived of possession by an offence, but that such offence was attended by the use of criminal force. *Ram Chandra Boral v Jityandria (1897), I. L. R., 25 Calc, 434,* and *Ishan Chandra Kalla v. Dina Nath Badhak (1899), I L. R, 27 Calc, 174,* followed. CHURAMAN v. RAM LAL (1903)
[I. L. R., 25 All., 341

12 COSTS.

41.—*Jurisdiction—Costs—Order for assess-* [illegible]

has no jurisdiction to pass an order, under s. 148 of the Code of Criminal Procedure, making a party liable for a certain sum as costs, without notice to him so that he may have an opportunity of contesting the same. PROKASH CHUNDER SARKAR v. RAM PRASAD PATTAK (1900)
[I. L. R., 28 Calc., 303; s.c., 5 C. W. N., 291

POST MORTEM REPORT.

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE . 6 C. W. N., 98

POSTAL MONEY ORDER.

——payment by—

See EXECUTION OF DECREE—MODE OF EXECUTION—INSTALMENTS.
[I. L. R., 24 All., 85

POTTAH.

See LEASE—CONSTRUCTION.
[I. L. R., 28 Calc., 720

See TENDER.

POWER OF APPOINTMENT.

See COURT-FEES ACT, SCH I, ART. 11.
[I. L. R., 25 Mad., 515

POWER OF ATTORNEY.

See PARDANASHIN WOMEN—EXECUTION OF DOCUMENT BY. I. L. R., 29 Calc., 744

POWER OF SALE.

See MORTGAGE—POWER OF SALE.

PRACTICE.

———

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE

See PRIVY COUNCIL, PRACTICE OF.

See ALSO THE PARTICULAR HEAD WHICH IS APPLICABLE.

——civil cases—

See ADMINISTRATION—CONTESTED LEGACIES . . . 6 C. W. N., 321

See COSTS—SPECIAL CASES—DIVORCE.
[I. L. R., 23 Calc., 84

See HINDU LAW—REVERSIONERS—ADMINISTRATION SUIT BY.
[I. L. R., 29 Calc., 260

See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS . I. L. R., 28 Calc., 242

PRACTICE—*continued.*

—— civil cases—*concluded.*

See PROBATE—OF WHAT DOCUMENTS GRANTED . I. L. R., 29 Calc., 311

See SMALL CAUSE COURT—

MOFUSSIL—PRACTICE AND PROCEDURE,

PRESIDENCY TOWNS—PRACTICE AND PROCEDURE.

———— appeal—

See TRIAL—ALLEGING OR PLEADING FRAUD . . . 6 C. W. N., 787

———— probate and letters of administration—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT 5 C. W. N., 377

———— Receiver, appointment of—

See RECEIVER . I. L. R., 28 Calc., 250

———— rule to show cause—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT
[5 C. W. N., 377, 383

——criminal cases—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE

See JOINDER OF CHARGES
[I. L. R., 25 Bom., 90

———— consideration of question outside rule—

See SECURITY FOR GOOD BEHAVIOUR.
[6 C. W. N., 593

1. CIVIL CASES.

1.—Appeal—*Decree awarding costs as against two defendants—Payment by one defendant—Appeal by both defendants jointly to High Court against decree—Decease of defendant who paid during pendency of appeal—Prosecution of appeal on behalf of survivor alone—Reversal of decree by High Court—Claim by legal representative of deceased defendant for restitution of amount paid as costs.*—A decree was obtained in a District Court against two defendants, by which they were ordered to deliver up certain property and to pay the costs of the suit. These costs were in fact [illegible] An appeal was preferred [illegible] t, but [illegible] The [illegible] t was not brought on the record, and when the appeal came on for hearing it was proceeded with by the second [illegible] that th [illegible] District [illegible] the ap[illegible] surviving defendant alone. The son and legal representative of the first defendant now presented a petition in execution, and claimed that the whole decree of the District Court had been reversed and

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

[illegible] entitled to restitution of the costs levied from his father under that decree until he had successfully prosecuted the appeal of his father which was still pending. NATESA AYYAR *v.* ANNASAMI AYYAR (1901) . . . I. L. R., 25 Mad., 426

2.—Commission—*Examination of witness on commission—Prolonged and unnecessary cross-examination.*—Where the Court is satisfied that the cross-examination of any witness on commission is being unnecessarily prolonged, it will order such cross-examination to be concluded within a certain time. SURAJ PROSAD *v.* STANDARD LIFE INSURANCE COMPANY (1903) . . I. L. R., 30 Calc., 625

3.———— *Civil Procedure Code (Act XIV of 1882), ss. 387, 399—Oaths Act (X of 1873), s. 13—Evidence, taken by commission, of* [illegible]

[illegible] C. W. N., 600
s.c., I. L. R., 30 Calc., 934

4.—Counsel—*Insolvent Debtors Act (11 & 12 Vic., c. 21), s. 36. Right of witness to be represented by Counsel.*—Where witnesses have been [illegible]

5.—Execution of decree, application for—*—Execution of decree—Declaratory decree erroneously construed as a decree capable of execution—Orders in execution after notice to judgment-debtor and without contest by him—Subsequent objection that the decree was not capable of execution—Judgment-debtor bound by previous orders.*—A decree, which was in form declaratory, was construed as being capable of execution, and on several occasions execution of it was ordered (after notice to the judgment-debtor, and without contest by him), attachments of the judgment-debtor's property were made, and amounts

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

alleged to be due were paid. Upon a subsequent

Mad, 54, and *Mungul Pershad Dichit* v. *Grija Kant Lahiri Chowdhry*, *L. R.*, 8 *I. A.*, 123, followed. SUBBARAMA AYYAR *v.* NAGAMMAL (1901)

I. L. R., 24 Mad., 683

6.—Execution proceedings—*Jurisdiction—Decree cannot be varied in the execution department.*—A decree of the High Court declared the title of the plaintiffs to share in all the properties described in the schedules thereto, excepting in two *mauzas*, which were declared to belong to the defendants. In execution, the objection was taken that certain parcels sued for and decreed as *kasht*, or *jote*, lands were in reality *kamat* lands, which necessarily, from the character of that holding, must have belonged to the proprietors of the *mauzas*

variation of the decree. But the objection was allowed by the High Court's decree now appealed from *Held*, reversing the order of the High Court, that it was beyond the jurisdiction of the executing Court to vary the decree, which plainly awarded the parcel as *jote* or *kasht* lands lying within the villages, and defined by measurements; so that there was no doubt as to their identity. To re-open the

substantial kind, calculated to cause great irregularity in the conduct of suits. UDWANT SINGH *v.* TOKHAN SINGH (1901)

I. L. R., 28 Calc., 353;
s.c., L. R., 28 I. A., 57

7.—Inspection and production of documents—*Civil Procedure Code (Act XIV of 1882), s. 130*—Where inspection of documents is

I. L. R., 28 Calc., 424

8.—Issues.—The fact that no issue is raised as to

v. SHRI DEV SIDHESHWAR (1901)

I. L. R., 26 Bom., 360

9.—Motions—*Decree passed without the suit appearing on the list for hearing.*—There is no fixed practice in Bombay which prevents a decree being obtained on motion without the suit's appearing on the list for hearing. PRAGDAS SAGURMALL *v.* GIRDHARDAS MATHURADAS (1901)

I. L. R., 26 Bom., 76

10.—Next friend—*Attorney and client—Change of attorneys on record—Application for*

who is *sui juris*, as long as he continues to act in that capacity. *Manick Lal Seal* v. *Sarat Kumari Dassee* (1883), *unreported*; *Ram Chunder Roy* v. *Poorno Chunder Roy* (1900), 4 *C. W. N.*, 175

course under such circumstances would be to apply for

new next
n, 390,
an order
NATH

I. L. R., 28 Calc., 264;
s c., 5 C. W. N., 434

11.—Non-appearance of plaintiff—*Suit by mortgagee on mortgage—Plea by defendant of absence of consideration—Plaintiff summoned as witness by defendant to prove non-payment of consideration—Non-appearance of plaintiff at hearing—Presumption arising from such non-appearance—Duty of parties to suit to come forward as witnesses in their own case—Circular No. 1750—Civil Procedure Code (Act XIV of*

mortgage. The defendant summoned the plaintiff as a witness, intending apparently to support his case by cross-examining him as to the alleged consideration. The plaintiff, however, did not appear, and the

the plaintiff that his accounts did not contain entries showing the payment of consideration to the defendant, but held that such presumption did not relieve the defendant from the obligation of proving that no such consideration had been paid. It

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

therefore confirmed the decree. On second appeal: *Held* that the decree should be reversed and the case re-tried. The plaintiff should have been compelled, if possible, to attend and give evidence and produce the mortgage-deed and accounts, and the defendant also should have given evidence on his own behalf and have submitted to cross-examination. SUBBAJI NARSINH KULKARNI *v.* SHIDDAPA BIN KALLYANAPA HUBBI (1901) . . I. L. R., 26 Bom., 392

12.—Opening case for defendant—*Suit—Plaintiff's case closed—Both defendants with* ...

(1902) . . . . I. L. R., 29 Calc., 32

13.—Parties—*Revival of suit—Substitution of parties—Code of Civil Procedure (Act XIV of 1882), ss 368, 372—"Pending suit"—Right to apply, accrual of—Limitation Act (XV of 1877), Sch. II, Art. 178.*—On directions to take an account in a suit, the suit is still "pending," within the meaning of s 372 of the Code of Civil Procedure, until ...

[I. L. R., 30 Calc., 609;
s.c., 7 C. W. N., 517

14.—Probate—*Probate, application to recall—Citation—Proof of will—Genuineness of will.*—On an application by a Hindu widow for an order that the probate obtained by her husband's brother of a will alleged to have been made by her husband be recalled, she not receiving any intimation of the application for probate, and that the will be proved in her presence: *Held* that such an application ...

(1903)

[I. L. R., 30 Calc., 528;
s.c., 7 C. W. N., 460

15.—Remand.—Case where, on objection being taken at a late stage that a mortgage-bond was not attested, as the law required, by two witnesses, the suit, instead of being dismissed, was sent back to enable plaintiff to adduce further evidence to prove that at least two of the persons whose names appeared on the face of the document were attesting witnesses. DINAMOYEE DEBI *v.* BON BEHARI KAPUR (1902)
[7 C. W. N., 160

16.—Report of Registrar—*Application to discharge or vary report—Exceptions to report—Notice of motion—Time for such notice—Belchambers' Rules and Orders of High Court, Original Side (1900), Rules 615, 617—Solicitor's mistake as to course of procedure—"Fraud, surprise or mistake, or such other special ground" under rule 617.*—If a party to a suit desires to discharge or vary a report, he must adopt the procedure laid down by Rule 615 (Belchambers' Rules and Orders of the High Court, Original Side, ...

itself; and not to something which has occurred quite outside and independent of the certificate or report. A mistake in not complying with the procedure laid down in Rule 615 is not a "special ground," within the meaning of Rule 617, for re-opening the report ROYAL INSURANCE CO. *v.* AUKHOY COOMAR DUTT (1901)
[I. L. R., 28 Calc., 272;
s.c., 5 C. W. N., 337

17.—Sale by Registrar—*Conditions of sale—Deficiency in area—Compensation—Annulment of sale—Costs.*—Where there is a substantial deficiency in the area of property sold at a Registrar's sale, so that the purchaser would not have offered the price that he did if he had been aware of such deficiency, the Court will not compel the purchaser to take the property with compensation, but will discharge him from the sale *Kissory Mohan Roy* v *Kali Charan Ghosh (1896), 1 C W. N., 106*, distinguished, *Jacobs* v. *Revell (1900), 2 Ch. Div., 858*, referred to. The purchaser so discharged from his sale is entitled to repayment of *the purchase-money*, with interest from the date of payment into Court, and the costs, charges and expenses, incurred by reason of his bidding for and being declared the purchaser of the property, and of and incidental to the application to be discharged from his purchase. *Quære*—whether he is entitled to the costs of a survey made by him to ascertain the area of the property. BANK OF BENGAL *v.* AKHOY KUMAR MUKERJEE (1901)
[6 C. W. N., 365

18.——————*Sale notification—Misdescription of property—Remedy of purchaser—Compensation—Annulment of sale.*—Where the misdescription of property in the sale notification does not go to the essence of the contract, the remedy which the purchaser can claim is compensation, and not annulment of the sale. ADMINISTRATOR

PRE-EMPTION—*continued.*

1. RIGHT OF PRE-EMPTION—*concluded.*

Ganga (1880), I. L. R., 2 All., 876, and *Muhammad Hasan* v. *Munna Lal (1886), I. L. R., 8 All., 434*, referred to. As to the effect which the

subsisted, but was of no more value than if the memorandum of village customs had been completely silent on the subject; and it could not be inferred from such an entry alone that the custom had fallen

could be attached to it *In the matter of Juggun Lall (1880), 7 C. L. R., 356*, and *Queen-Empress* v. *Grees Chunder Banerjee (1884), I. L. R., 10 Calc., 1024*, referred to. The cases of *Uman Parshad*

3.—Under-proprietor—*Act XVIII of 1876 (Oudh Laws Act), Part III, Chapter II—"Member of the village community"—Right of under-proprietor to pre-empt a mahal sold by a proprietor.—Held* that, under cl. 3 of s 9 of the Oudh Laws Act, 1876, a person holding an under-proprietary interest in a *mahal* sold by the Court of Wards, on behalf of the proprietor of the *mahal*, was entitled to pre-emption in respect of such *mahal* as against the vendor. DEIG BIJAI SINGH *v.* DEPUTY COMMISSIONER OF GONDA (F B, 1902)

[I. L. R., 24 All., 420

2 CONSTRUCTION OF WAJIB-UL-ARZ

4.—Co-sharer—*Wajib-ul-arz—Sale to a*

PRE-EMPTION—*continued.*

2. CONSTRUCTION OF WAJIB-UL-ARZ—*continued.*

Weekly Notes, 1899, p. 126, referred to. NARAIN SINGH *v.* PARBAT SINGH (1901)

[I. L. R., 23 All., 247

5.—"Ek jaddi"—*Wajib-ul-arz—Interpretation of document—Meaning of the term "ek jaddi."—Held* that the term "*ek jaddi*," used in the pre-emption clause of a *wajib-ul-arz*, signifies persons descended from a common ancestor through the male line. *Guneshee Lal* v. *Zaraut Ali, N.-W. P. H. C. Rep., 1870, p 343*, referred to CHATAR SINGH *v.* KALYAN SINGH (1900) I. L. R., 23 All., 32

6.—"Hissadar"—*Wajib-ul-arz—Interpretation of document*—The clause in the *wajib-ul-arz* of

pre-emption to a *hissadar* of a superior class upon a sale to a *hissadar* of an inferior class. *Ilahi Jan* v. *Pheku, Weekly Notes, 1895, p. 9*, and *Ilahi Bakhsh* v *Ghulam Abbas, Weekly Notes, 1898, p. 15*, referred to. SHEOBALAK SINGH *v* LACHMIDHAR (1901) . . . I. L. R., 23 All., 427

7.—"Hissadaran shikmi"—*Wajib-ul-arz—Construction of document—Meaning of the term "hissadaran shikmi."—Held* that the expression "*hissadaran shikmi*," as used in the clauses of a *wajib-ul-arz* dealing with various classes of persons who were entitled to pre-emption in preference to strangers, did not necessarily imply any idea of subordination, but was rightly considered applicable to persons who were co-sharers in the particular *khattu* of the *patti* in which the land sold was situated ABDUL SHAKUR *v.* MENDAI (1901) I. L. R., 23 All., 260

8.—Mortgage—*Mortgage by conditional sale—Accrual of right of pre-emption when sale becomes absolute—Wajib-ul-arz—Partition of*

con-
n:—
will
ise to
also

do not take it, then to proprietors of the *mahal*; and, in case of refusal by all the sharers before mentioned, he shall have power to transfer it to a stranger." While this *wajib-ul-arz* was in force, namely, in 1890, certain property, to which its provisions applied, was mortgaged by a deed of conditional sale. In 1894, after partition of the *mahal*, a new *wajib-ul-arz* was framed for the *mahal* in which the [illegible] which also con-

PRE-EMPTION—*continued.*

2. CONSTRUCTION OF WAJIB-UL-ARZ —*concluded.*

[I. L. R., 24 All., 493

3. PURCHASE-MONEY.

9.—*Mortgage—Mortgage-money fraudulently*

between the price paid by Shuhrat Singh and the consideration mentioned in the deed of mortgage They based their suit mainly upon a stipulation in the deed, to the effect that, if the mortgage money due to the mortgagees was in any way jeopardized, the mortgagees would be entitled to realize it with interest at 9 *per cent per annum,* and partly upon

4. LOSS OR WAIVER OF RIGHT

10.—*Sale—Right of re-purchase, provided in a conveyance—Contract running with the land* —In a conveyance executed by plaintiffs in favour of

PRE-EMPTION—*concluded.*

4. LOSS OR WAIVER OF RIGHT—*concluded.*

urchase 4, who ontract erefore liable NABAB N., 343

PREJUDICE.

See CONVICTION . 5 C. W. N., 567

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—EVIDENCE, MODE OF TAKING, ETC. 5 C. W. N., 544

PRELIMINARY INQUIRY.

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL . 6 C. W. N., 295

PRELIMINARY ORDER OR DECREE.

See APPEAL—OMISSION TO APPEAL IN TIME AGAINST PRELIMINARY ORDER OR DECREE.

PREROGATIVE OF THE CROWN.

——power of Indian Legislature to affect—

See MADRAS CITY MUNICIPAL ACT, s. 341. [I. L. R., 25 Mad., 457

——to discontinue prosecution—

See RIOTING . 7 C. W. N., 301

PRESCRIPTION.

	Col
EASEMENTS—	
(*a*) HOUSES AND OTHER BUILDINGS .	874
(*b*) LIGHT AND AIR	875
(*c*) PRIVACY	„

——easements—

See EASEMENT I. L. R., 29 Calc., 363

See RIGHT OF WAY . 6 C. W. N., 197

See RIGHT TO USE OF WATER [I. L. R., 29 Calc., 100
„ 30 Calc., 281

EASEMENTS.

(*a*) HOUSES AND OTHER BUILDINGS.

1.—Projection—*Beneficial enjoyment of the dominant owner—Cornice projected over another's land, as ornamentation—Indian Easements Act (V of 1882)* —There can be no prescriptive right to a projection which has been erected merely for the

PRESCRIPTION—*concluded.*

EASEMENTS—*concluded.*

(*a*) HOUSES AND OTHER BUILDINGS—*concluded.*

purpose of ornamentation. *John George Bagram v. Khettranath Karformah (1869), 3 B. L. R. (O. C.), 18, 47,* referred to. NRITTA KUMARI DASSI *v.* PUDDOMONI BEWAH (1903)

[I. L. R., 30 Calc., 503; s.c., 7 C. W. N., 649

(*b*) LIGHT AND AIR

2.—*Injunction—Alteration of easement—New windows higher than the old ones—New easement—Indian Easements Act (V of 1882), s. 23.*—Plaintiff had two windows in the rear wall of his house. In 1886 he rebuilt his house, and opened new windows, which were of nearly the same size, but were a little higher than the old ones. In 1899 defendant built his house and blocked up these two new windows The plaintiff sued for an injunction. The first Court dismissed the suit. The lower Appellate Court reversed the decree and granted an

tenement was rather less than before On second appeal: *Held*, reversing the decree and dismissing the suit, that the easement claimed in respect of the

[I. L. R., 26 Bom., 5..

(*c*) PRIVACY

3.—*Right of privacy—Suit to prevent opening of windows—Usage, proof of.*—In a suit for closing the window on the wall of the defendant, and for the issue of a permanent injunction restraining

in any one house in the village so as to overlook the female apartments of another, but not that the villagers had been in the habit of preventing their co-villagers from opening windows in such a manner *Held* that the usage as to the right of privacy was not proved *Also* that the fact that the defendant's wall had been standing there over 50 years, and during this period no window had been opened, was not sufficient to give the plaintiff a prescriptive right to prevent the defendant opening a window in that wall SRI NARAIN CHOWDHRY *v.* JODOO NATH CHOWDHRY (1900)

[5 C. W. N., 147

PRESIDENCY BANKS ACT (XI OF 1876).

—ss 36, 37—*Bank of Bombay—Power of Directors to lend money on equitable mortgage.*—The Directors of the Bank of Bombay discounted at different times promissory notes for sums amounting in all to about R60,000, drawn by the firm of Fazulbhoy Meheralli Chinoy in favour of one Meheralli Mahomed Chinoy, who, it subsequently appeared, was a partner in the firm, but was not ... transactions ... Directors of ... an equitable ... on certain immovable properties situate in Bombay and Mahabaleshvar, as security for the then existing and future indebtedness of the said firm or Meheralli to the Bank. The notes became due, and were dishonoured, the firm having in the meanwhile become insolvent. The Bank thereupon sued the Official Assignee, as assignee of the firm's estate, to recover ... that ... rable ... fficial ... the ... llegal ... mortgage, ... ed. *Held* ... said Act, ... securities. ... 37 of the ... immovable property created as a security for a *bonâ fide* liability already in existence. The words of s. 37 impose a restriction on making a loan on mortgage of immovable property, not upon the Bank but upon the Directors As between the Directors and the Bank, the Directors would be liable for any loss resulting from the breach of the provisions of the sections, but the mortgagors could not repudiate the obligation into which they purported to enter, and the Official Assignee was not in a more favourable position. TURNER *v.* BANK OF BOMBAY (1900)

[I. L. R., 25 Bom., 52

PRESIDENCY MAGISTRATE.

——concurrent jurisdiction of—

See CORONER . . 7 C. W. N., 889

——duty of—

See DISCHARGE OF ACCUSED.

[I. L. R., 27 Bom., 84

——jurisdiction of—

See DISCHARGE OF ACCUSED.

[I. L. R., 28 Calc., 652

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS.

[I. L. R., 25 Bom., 636

PRESIDENCY TOWNS SMALL CAUSE COURTS ACT (XV OF 1882).

See SMALL CAUSE COURT, PRESIDENCY TOWNS

——s. 38—

See WITHDRAWAL OF SUIT.
[I. L. R., 29 Calc., 239

——ss. 69, 70—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE.
[I. L. R., 28 Calc., 260

PRESUMPTION.

See BENGAL TENANCY ACT, s. 51.
[6 C. W. N., 589

See EVIDENCE—CIVIL CASES—MAPS.
[7 C. W. N., 849

See GAMBLING . . 5 C. W. N., 503

See HINDU LAW—
INHERITANCE—MIGRATING FAMILIES, I. L. R., 29 Calc., 433
JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY;
WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.
[I. L. R., 25 Mad., 351

See HUNDI—ACCEPTANCE.
[I. L. R., 26 Mad., 526

See PARDANASHIN WOMEN.
[5 C. W. N., 505

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 28 Calc., 109

See RIGHT TO USE OF WATER.
[I. L. R., 30 Calc., 281

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 30 Calc., 1

——as to ancient document—

See EVIDENCE ACT (I OF 1872), s. 90
[I. L. R., 29 Calc., 740
„ 27 Bom., 452

——as to client's consent to compromise—

See COUNSEL . . 6 C. W. N., 82

——as to nature of tenancy—

See LANDLORD AND TENANT—NATURE OF TENANCY.

——as to tenancy being a "tenure"—

See BENGAL TENANCY ACT (VIII OF 1885), s. 5 (5) . . 6 C. W. N., 825

——from non-denial in written statement of allegation made against defendant—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY . I. L. R., 26 Bom., 735

PRESUMPTION—*concluded.*

——none, as to legality of distraint—

See PENAL CODE, s. 424.
[I. L. R., 25 Mad., 729

——of existence of certain facts—

See WARRANT OF ARREST—CIVIL CASES
[6 C. W. N., 845

——of holding at fixed rent from time of Permanent Settlement—

See BENGAL TENANCY ACT, s. 50
[5 C. W. N., 60

——of legitimacy—

See ONUS OF PROOF—LEGITIMACY.
[I. L. R., 25 All., 403

——of ownership—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND
[I. L. R., 23 All., 126

——of payment—

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.
[I. L. R., 29 Calc., 334

——under Evidence Act, 1872, s. 114, Ill. (g)—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS.
[I. L. R., 30 Calc., 1033

——when one co-parcener separates from others—

See HINDU LAW—PARTITION—EFFECT OF PARTITION . I. L. R., 30 Calc., 725

—*Presumption of intention to bring about a certain result* —There is no presumption that a person [illegible]

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890).

—s. 3—*Animals—Cruelty to animals—Police, Bombay Town—Act XLVIII of 1860, s. 21—Railway Company—Master and servant—Criminal liability of master for his servant's acts—Goods yards of a railway—Public place* —The Great Indian Peninsula Railway Company carried twenty-seven head of cattle from Talegaon to Bombay These cattle were put in one truck by their owner

PRESCRIPTION—*concluded.*

EASEMENTS—*concluded.*

(*a*) HOUSES AND OTHER BUILDINGS—*concluded.*

purpose of ornamentation *John George Bagram v. Khettranath Karformah (1869), 3 B. L. R. (O. C.), 18, 47,* referred to. NEITTA KUMARI DASSI *v.* PUDDOMONI BEWAH (1903)

[I. L. R., 30 Calc., 503; s.c., 7 C. W. N., 649

(*b*) LIGHT AND AIR.

2.—*Injunction—Alteration of easement—New windows higher than the old ones—New easement—Indian Easements Act (V of 1882), s. 23.*—Plaintiff had two windows in the rear wall of his house. In 1886 he rebuilt his house, and opened new windows, which were of nearly the same size, but were a little higher than the old ones. In 1899 defendant built his house and blocked up these two new windows The plaintiff sued for an injunction. The first Court dismissed the suit. The lower Appellate Court reversed the decree and granted an injunction, holding that the plaintiff did not lose his easement by changing the position of the windows, because the new ones were nearly of the same dimension, and, as their position was higher than that of the old windows, the burden on the servient tenement was rather less than before. On second appeal

the sui

new w

of ligh

quite

windows; and that, therefore, the easement respecting them could be acquired only by enjoying it for the required length of time BAI HARIGANGA *v.* TRICAMLAL KEDARESHWAR (1902)

[I. L. R., 26 Bom., 374

(*c*) PRIVACY.

3.—*Right of privacy—Suit to prevent opening of windows—Usage, proof of*—In a suit for closing the window on the wall of the defendant, and for the issue of a permanent injunction restraining

villagers had been in the habit of preventing their co-villagers from opening windows in such a manner *Held* that the usage as to the right of privacy was not proved. *Also* that the fact that the defendant's wall had been standing there over 50 years, and during this period no window had been opened, was not sufficient to give the plaintiff a prescriptive right to prevent the defendant opening a window in that wall. SRI NARAIN CHOWDHRY *v.* JODOO NATH CHOWDHRY (1900)

[5 C. W. N., 147

PRESIDENCY BANKS ACT (XI OF 1876).

—ss 36, 37—*Bank of Bombay—Power of Directors to lend money on equitable mortgage.*—The Directors of the Bank of Bombay discounted at different times promissory notes for sums amounting in all to about R60,000, drawn by the firm of Fazulbhoy Meherallı Chinoy in favour of one Meheralli Mahomed Chinoy, who, it subsequently appeared, was a partner in the firm, but was not known to be so at the time of the said transactions Before discounting the later notes, the Directors of the Bank obtained from Meheralli an equitable mortgage, by deposit of title-deeds on certain immovable properties situate in Bombay and Mahabaleshvar, as security for the then existing and future indebtedness of the said firm or Meheralli to the Bank. The notes became due, and were dishonoured, the firm having in the meanwhile become insolvent The Bank thereupon sued the Official

that

rable

fficial

Assignee contended that, under s. 37 of the Presidency Banks Act (XI of 1876), it was illegal

tgage,

Held

Act,

rities.

Held, also, that the provisions of s 37 of the Act did not invalidate a charge on immovable property created as a security for a *bonâ fide* liability already in existence The words of

position. TURNER *v.* BANK OF BOMBAY (1900)

[I. L. R., 25 Bom., 52

PRESIDENCY MAGISTRATE.

——concurrent jurisdiction of—

See CORONER . . 7 C. W. N., 889

——duty of—

See DISCHARGE OF ACCUSED.

[I. L. R., 27 Bom., 84

——jurisdiction of—

See DISCHARGE OF ACCUSED.

[I. L. R., 28 Calc., 652

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS.

[I. L. R., 25 Bom., 636

PRESIDENCY TOWNS SMALL CAUSE COURTS ACT (XV OF 1882).

See SMALL CAUSE COURT, PRESIDENCY TOWNS.

——s. 38—

See WITHDRAWAL OF SUIT.
[I. L. R., 29 Calc., 239

——ss. 69, 70—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—*PRACTICE AND PROCEDURE.*
[I. L. R., 28 Calc., 260

PRESUMPTION.

See BENGAL TENANCY ACT, s. 51.
[6 C. W. N., 589

See EVIDENCE—CIVIL CASES—MAPS.
[7 C. W. N., 849

See GAMBLING . . 5 C. W. N., 503

See HINDU LAW—
INHERITANCE—MIGRATING FAMILIES; I. L. R., 29 Calc., 433
JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY;
WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.
[I. L. R., 25 Mad., 351

See HUNDI—ACCEPTANCE.
[I. L. R., 26 Mad., 526

See PARDANASHIN WOMEN.
[5 C. W. N., 505

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 28 Calc., 109

See RIGHT TO USE OF WATER.
[I. L. R., 30 Calc., 281

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 30 Calc., 1

——as to ancient document—

See EVIDENCE ACT (I OF 1872), s 90
[I. L. R., 29 Calc., 740
„ 27 Bom., 452

——as to client's consent to compromise—

See COUNSEL . . 6 C. W. N., 82

——as to nature of tenancy—

See LANDLORD AND TENANT—NATURE OF TENANCY.

——as to tenancy being a "tenure"—

See BENGAL TENANCY ACT (VIII OF 1885), s 5 (5) . . 6 C. W. N., 825

——from non-denial in written statement of allegation made against defendant—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY . I. L. R., 26 Bom., 735

PRESUMPTION—*concluded.*

——none, as to legality of distraint—

See PENAL CODE, s 424.
[I. L. R., 25 Mad., 729

——of existence of certain facts—

See WARRANT OF ARREST—CIVIL CASES.
[6 C. W. N., 845

——of holding at fixed rent from time of Permanent Settlement—

See BENGAL TENANCY ACT, s. 50
[5 C. W. N., 60

——of legitimacy—

See ONUS OF PROOF—LEGITIMACY.
[I. L. R., 25 All., 403

——of ownership—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.
[I. L. R., 23 All., 126

——of payment—

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES
[I. L. R., 29 Calc., 334

——under Evidence Act, 1872, s. 114, Ill. (g)—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS.
[I. L. R., 30 Calc., 1033

——when one co-parcener separates from others—

See HINDU LAW—PARTITION—EFFECT OF PARTITION . I. L. R., 30 Calc., 726

—*Presumption of intention to bring about a*

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890).

—s. 3—*Animals—Cruelty to animals—Police, Bombay Town—Act XLVIII of 1860, s 21—Railway Company—Master and servant—Criminal liability of master for his servant's acts—Goods yards of a railway—Public place*—The Great Indian Peninsula Railway Company carried twenty-seven head of cattle from Talegaon to Bombay These cattle were put in one truck by their owner

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)—*concluded.*

under the supervision of the Company's goods clerk at Talegaon, and were so allowed to be put by the Company's servants at Talegaon, in spite of a circular issued to them by the Traffic Manager to prevent the overcrowding of cattle. When the cattle were detrained at the goods yard of the Company at Wadi Bundar, they were found suffering from the effects of overcrowding. The Bombay Society for the Prevention of Cruelty to Animals prosecuted the Railway Company under s 21 of Act XLVIII of 1860 and s. 3 (*b*) of the Act for the Prevention of Cruelty to Animals (Act XI of 1890). The Presidency Magistrate, who tried the case, referred to the High Court the following two questions:—(1)

certainly not when the act is done contrary to the orders of the master CAWASJI MERWANJI SHROFF *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY (1902) . . . I. L. R., 26 Bom., 609

PREVIOUS ACQUITTAL.

See CRIMINAL PROCEDURE CODE, s 403.
[I. L. R., 24 Mad., 641

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.
[I. L. R., 28 Calc., 689

See SECURITY FOR GOOD BEHAVIOUR
[5 C. W. N., 28

See WHIPPING
[I. L. R., 25 Bom., 712

PREVIOUS CONVICTION.

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.

PRIMOGENITURE.

See HINDU LAW—CUSTOM—PRIMOGENITURE.

See SUCCESSION.
[L. R., 30 I. A., 190

PRINCIPAL AND AGENT.

See BROKER.
[I. L. R., 30 Calc., 202

See CONTRACT—WAGERING CONTRACTS.
[I. L. R., 23 All., 165
„ 25 All., 639

See EASEMENT . I. L. R., 26 Mad., 66

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT.
[I. L. R., 26 Bom., 410

See LIMITATION ACT, 1877, SCH II, ART. 89 . . I. L. R., 24 All., 27

See ONUS OF PROOF—PRINCIPAL AND AGENT.

——application of rule that notice to agent binds principal—

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.
[L. R., 29 I. A., 203

——authority of agent—

See CROWN LANDS.
[I. L. R., 26 Mad., 268

See EASEMENT . I. L. R., 26 Mad., 51

——liability of principal—

See RIOTING . I. L. R., 28 Calc., 504

1. AUTHORITY OF AGENTS.

1.—*Contract Act (IX of 1872), s 230—Agency coupled with an interest—Suit by agent, in his own name, on contract not entered into by him as agent—Maintainability of suit*—A document was executed in favour of plaintiff by the members of a Malabar *devasom*, whereby, in consideration of advances made by plaintiff, all the properties of the *devasom* were given over to him on lease for eighteen years. Plaintiff was given ... conduct suits and do other acts on

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*concluded.*

is one made by the agent, he has no cause of action, because there is no privity. SUBRAHMANIA PATTAR *v.* NARAYANAN NAYAR (1900)

[I. L. R., 24 Mad., 130

2. RATIFICATION.

3.—*Government—Government officers—Scope of authority*—The plaintiffs sued the Secretary of State (defendant 1) and one Makan Haribhai (defendant 2), who was an overseer in the Government Local Fund Department in the Surat district, for the price of bamboos sold to the second defendant for the purpose of erecting sheds during an epidemic of plague in 1897 The plaintiffs alleged that they supplied the bamboos to the second defendant on his representing that he was acting under the orders of the Assistant Collector and the *Mamlatdar.* The first defendant denied that Government had ever authorised the purchase of the bamboos, and the second defendant denied that he had made the alleged representation. The lower Court passed a decree against the first defendant On appeal to the High Court· *Held (reversing the decree)* that there was no evidence to show that the second defendant was authorised by the Government to purchase the

3. REVOCATION

4.—Registration—*Contract Act (IX of 1872), s. 208*—If the authority of the agent to ... of a document is revoked before

4 LIABILITY OF PRINCIPAL.

5.—*Fraud of agent—Liability of principal—Scope of agent's authority—Fraud in the interest of the agent and not of the principal—Theft and forgery by servants, no duty to guard against—*

PRINCIPAL AND AGENT—*continued.*

4. LIABILITY OF PRINCIPAL—*concluded.*

Neglect—Proximate and direct cause of loss—Presumption—Guarantee by broker in one transaction; effect of, on subsequent transactions, where

principal can be shown; but, where the fraud is committed by the agent when he was acting, not in the interest of his employers but entirely in his own interests, the principal cannot be held responsible for the consequences of his fraudulent conduct. *Barwick v. English Joint Stock Bank (1867),*

[illegible]

6 C. W. N., 426

6.—Tenant—Suit for Damages.—A master or

[s.c., 7 C. W. N., 126

PRINCIPAL AND AGENT—*concluded.*

5. LIABILITY OF AGENTS.

7.—*Illegal cess—Khurcha—Liability of agent to account for sums realized, not legally recoverable by principal—Bengal Tenancy Act, s. 74.*—An agent is liable to account to his principal for the [illegible]

NAGENDRABALA DASSI *v.* GURU DOYAL MUKERJI (1903) . . . I. L. R., 30 Calc., 1011; [s.c., 7 C. W. N., 535

PRINCIPAL AND SURETY.

See SURETY.

PRIORITY.

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

See VENDOR AND PURCHASER—INVALID SALES . I. L. R., 26 Bom., 159

——of deeds —

See MORTGAGE—SALE OF MORTGAGED PROPERTY.

——of registered over unregistered deed—

See REGISTRATION ACT (III OF 1877)—

s. 49;

ss. 49 AND 50;

s. 50

——of Official Assignee—

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

See INSOLVENT ACT (11 & 12 VICT. c. 21). [I. L. R., 28 Calc., 419

PRISONER.

See ACCUSED PERSON.

See EXAMINATION OF ACCUSED PERSON.

See INSOLVENT ACT (11 & 12 VICT., c. 21), s. 8 I. L. R., 26 Bom., 649

See PARDON.

See WRONGFUL CONFINEMENT. [I. L. R., 30 Calc., 95

PRISONERS ACT (III OF 1900).

——ss. 2, 11—

See CORONER . . 7 C. W. N., 889

——ss. 7, 8, 9—

See HABEAS CORPUS—WRIT OF. [I. L. R., 29 Calc., 286

PRIVACY.

See PRESCRIPTION—EASEMENTS—PRIVACY.

PRIVATE DEFENCE, RIGHT OF.

See ABSCONDING OFFENDER. [I. L. R., 29 Calc., 417

See PENAL CODE, s. 424. [I. L. R., 25 Mad., 729

See RIOTING . I. L. R., 24 All., 298

See THUMB IMPRESSIONS. [I. L. R., 30 Calc., 97

1.—*Act XLV of 1860 (Indian Penal Code), s. 147—Riot—Private defence of property—Act XLV of 1860 (Indian Penal Code), ss. 96 et seq.—Deliberate aggression by party entitled to possession.*—Party *A* sowed a crop in a field to the possession of which apparently they were entitled. Party *B*, claiming the field and the crop as theirs, entered upon the land and began to cut the crop. Party *A*, having watched party *B* enter upon the land, took counsel together and then proceeded to attack party *B*, and a fight ensued in which grievous hurt was caused. *Held* that it was not open to party *A* to plead that they were acting in the exercise of their right of private defence of property. *Queen-Empress* v. *Prag Dat (1898), I. L. R., 20 All., 459,* followed. *Queen-Empress* v. *Narsang Pathabhai (1890), I. L. R., 14 Bom., 441,* distinguished. *Pachkauri* v. *Queen-Empress (1897), I. L. R., 24 Calc., 686,* not followed. KING-EMPEROR *v.* KALLIJI (1901) . I. L. R., 24 All., 143

2.—*Penal Code (Act XLV of 1860), ss. 97, 101, 104—Private defence—"Protect a right"—Unlawful assembly.*—The villagers belonging to *C* walked [illegible] accused were justified, in the circumstances, in exercising their right of private defence; and the harm inflicted was not more than appeared to have been necessary for the purpose of self-defence. REGULA BHEEMAPPA *v.* EMPEROR (1902) [I. L. R., 26 Mad., 249

PRIVATE LAND.

See BENGAL TENANCY ACT, s. 120 (2). [7 C. W. N., 400

PRIVATE STREET.

See BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT VI OF 1873), ss. 33 AND 42 . . I. L. R., 27 Bom., 221

PRIVILEGE.

——from suit—

See Defamation.

See Libel.

See Secretary of State
[I. L. R., 27 Bom., 189

PRIVILEGED COMMUNICATION.

See Libel.

—*Penal Code (Act XLV of 1860), s. 499, Eighth Exception—Defamatory communication made in official confidence—Malice in fact—Privilege of public officer to refuse to disclose official communication, nature of—Public interests—Indian Evidence Act (I of 1872), s 124*—Where a defamatory statement is made on a privileged occasion, the complainant must show that there was malice in fact. S. 124, Indian Evidence Act, makes the public officer, to whom a communication is made in official confidence, the judge of whether such communication should or should not be divulged in the public interest, and he is entitled to decide whether the public interests would suffer by its production, and, if he considers they would so suffer, to refuse to produce it [illegible] 889.; *Henne* [illegible] referred to [illegible] defamatory [illegible] confidence, c [illegible] publication [illegible] scandal in the office: *Held* that the case did not [illegible]

PRIVY COUNCIL.

See Appeal to Privy Council

See Privy Council, Practice of

PRIVY COUNCIL, PRACTICE OF.

See Appeal to Privy Council—Practice and Procedure.

1 SPECIAL LEAVE TO APPEAL.

1.—**Case under appealable value**—*Civil Procedure Code (Act XIV of 1882), ss 600, 596—Privy Council, special leave to appeal to—Practice*—In preferring an appeal to the Privy Council, in a case which is under the appealable value, a person who asks for special leave to appeal should first apply to the High Court for a certificate, under the second part of s 600, that the case "is otherwise a fit one for appeal." Special leave to appeal will be given only in cases which involve a substantial question of law The word 'and,' in the first part of s 596, means 'and' and not 'or' Moti Chand v Ganga Pershad Singh (1901) . . . . . 6 C. W. N., 362: [s.c., I. L. R., 24 All., 174; L. R., 29 I. A., 40

PRIVY COUNCIL, PRACTICE OF—*concluded.*

1. SPECIAL LEAVE TO APPEAL—*concluded.*

2 CONCURRENT JUDGMENTS ON FACTS.

[illegible] O [illegible] d[illegible] C [illegible] fa [illegible] be erroneous, is none the less applicable, although the Courts have not taken precisely the same view of the weight to be attached to each particular item of evidence. A case where one Court has relied on the oral, and the other on the documentary, evidence is within the rule Ram Anugra Narain Singh v Chowdhry Hanuman Sahai (1902)
[I. L. R., 30 Calc., 303: s.c., 7 C. W. N., 225; L. R, 30 I. A., 41

3 COSTS

3.—**Costs of printing record.**—In consequence of reckless extravagance in the printing of the record, their Lordships directed that only the costs of two volumes should be allowed, limited in respect of them to what is fair and reasonable. Venkayyamma Garu v Venkataramanayyamma (1902) . . . L. R., 29 I. A., 156: s.c., I. L. R., 25 Mad., 678; 7 C. W. N., 1

PROBABLE CAUSE.

See Reasonable and Probable Cause.

PROBATE.

See Administration
[I. L. R., 26 Bom., 267

See Executor . I. L. R., 27 Bom., 281

See Practice—Civil Cases—Probate.

See Will—Validity of Will
[I. L. R., 23 All., 472

PROBATE—*continued.*

——**appeal**—

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15 . . . 5 C. W. N., 781

——**duty**—

See COURT-FEES ACT, SCH. I, ART. 11.

—— **inquiry as to value of property**—

See COURT-FEES ACT, s. 19H. [6 C. W. N., 898

—— **of will of Sikh, grant of**—

See PROBATE AND ADMINISTRATION ACT (V OF 1881) . . 7 C. W. N., 895

1. POWER OF HIGH COURT TO GRANT.

1.—*Probate or Letters of Administration—Jurisdiction of High Court to grant—Estate of a deceased who had not dwelt or left goods within limits of Presidency—Succession Act (X of 1865), s. 40—Letters Patent, 1862, cl. 34.*—The High Court of Madras has no jurisdiction ...

2. OF WHAT DOCUMENTS GRANTED.

2.—**Nuncupative will**—*Act V of 1881 (Probate and Administration Act), s. 3—Will—Probate granted of a nuncupative will made by a Hindu—Held* that probate may be granted of a nuncupative will made by a Hindu. *In re the will of Haji Mahomed Abba (1899), I. L. R., 24 Bom., 8,* followed. GOKUL CHAND *v.* MANGAL SEN (1903) . I. L. R., 25 All., 313

3.—**Will with alterations in pencil**—*Practice—Application for probate of copy-will with alterations in pencil—Codicil—Will, pencil* ...

were likely to fade in course of time. *Gann* v. ...

[I. L. R., 29 Calc., 311; s.c., 6 C. W. N., 477

PROBATE—*continued.*

3. TO WHOM GRANTED.

4. — *Probate and Administration Act (V of 1881), ss. 6, 19—Universal legatee—Probate granted by mistake, effect of.*—Under s 6 of the Probate and Administration Act, probate can be ...

legatee by mistake: *Held* that such grant was invalid from the first, and the person to whom such grant was made could not be constituted an executor so as to be empowered to exercise any of the powers conferred on executors under the Act. *Also* that a mortgage executed by such a person without the Judge's permission is bad PUNDIT PRAYRAG RAI *v.* GOUKARAN PERSHAD TEWARI (1902) [6 C. W. N., 787

4 OPPOSITION TO, AND REVOCATION OF, GRANT.

5.—**Opposition to grant**—*Caveat—Judgment-creditor—Fraudulent creditor—Probate and Administration Act (V of 1881), s. 69.*—The words "interest in the estate of the deceased," in s 69 of the Probate and Administration Act, mean "interest in the estate left by the deceased" A judgment-creditor who, but for the will, would in execution of ...

[I. L. R., 28 Calc., 441

6. — **Revocation of grant**—*Probate and Administration Act (V of 1881), ss. 50 and 87—Revocation of probate—Procedure—Practice—Motion on notice—Rule nisi—Jurisdiction—* ...

and not by rule The procedure by rule *nisi* should be confined to applications which are urgent, and where relief in the shape of an injunction is required. IN THE GOODS OF MOHENDRA NARAIN ROY (1900) [5 C. W. N., 377

PROBATE—*continued.*

4. OPPOSITION TO, AND REVOCATION OF, GRANT—*continued.*

7. ———— *Probate and Administration Act (V of 1881), ss 50 and 83—Revocation of probate—Procedure—Practice—Motion on notice—Suit to set aside probate—Rule nisi—Will, invalidity of—Grant of probate,*

v. *Nilruttun Mundle (1878), I L. R, 4 Calc,*

(1900), 5 C. W. N., 377, referred to IN THE GOODS OF HARENDRA KRISHNA MUKERJEE (1900)
[5 C. W. N., 383

8 ———— *Effect of probate—Revocation of probate—Grounds of refusal or revocation of probate—Filing of inventory and account—Probate and Administration Act (V of 1881), ss 50 and 98*—On the 7th August, 1897, one Baba Maharaj died at Poona, leaving his widow pregnant. By his will he appointed Bal Gangadhar Tilak (the appellant) and three others

file an inventory and account as required by s. 98 of the Probate Act (V of 1881) The District Judge granted the application, and revoked the

Act (V of 1881) was not a ground for revocation. There was no circumstance in the case from which

PROBATE—*concluded.*

4. OPPOSITION TO, AND REVOCATION OF, GRANT—*concluded.*

wilful omission on the part of the executors could be inferred. The grant of probate is decisive only of the genuineness of the will propounded, and of the

words "become useless and inoperative", in s. 50, cl. 41, of the Probate Act (V of 1881), imply the discovery of something which, if known at the date of the grant, would have been a ground for refusing it, *e g*, the discovery of a later will or codicil, or subsequent discovery that the will was forged, or that the alleged testator is still living. BAL GANGADHAR TILAK *v.* SAKWARBAI (1902)
[I. L. R., 26 Bom., 792

PROBATE AND ADMINISTRATION ACT (V OF 1881).

See LETTERS OF ADMINISTRATION.
[I. L. R., 28 Calc., 587

— *Application to Sikhs—Sikhs, if Hindus—Hindu law—Will—Proof of execution—Brahmos, if Hindus—Interpretation of Statutes—Meaning of the word "Hindu", as used in old and new Acts—Lapses from orthodox practice,*

diet and ceremonial observance held not to

——s. 3—

See PROBATE—OF WHAT DOCUMENTS GRANTED . I. L. R., 25 All., 313

——ss. 4, 12, 14, 15, 19, 38, 82, 187—

See REPRESENTATIVE OF DECEASED PERSON . . I. L. R., 30 Calc., 1044

——s. 7—

See WILL, CONSTRUCTION
[6 C. W. N., 310

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*continued.*

——ss. 12, 14, 15—

See ante, ss. 4, 12, ETC.

——s. 19—

See ante, ss. 4, 12, ETC.

See PROBATE—TO WHOM GRANTED. [6 C. W. N., 787

——s. 38—

See ante, ss. 4, 12, ETC.

—— s. 47—*Unadministered estate—Letters of Administration de bonis non.*—Where letters of administration to the deceased's estate were granted to the widow, limited during the minority of her [illegible]

...

no bar to such grant IN THE GOODS OF GIRIS CHANDRA MITTER (1902) . 6 C. W. N., 581

——s. 50—

See LETTERS OF ADMINISTRATION. [6 C. W. N., 912

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT. [5 C. W. N., 377, 383
I. L. R., 26 Bom., 792

——ss. 51, 78—

See SURETY—DISCHARGE OF SURETY. [I. L. R., 29 Calc., 68

——ss. 51, 86, 90—

See APPEAL . I. L. R., 28 Calc., 149

——s. 69—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT. [I. L. R., 28 Calc., 441

——s. 78—

See ante, ss. 51, 78.

——s. 82—

See ante, ss. 4, 12, ETC.

——s. 83—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT . 5 C. W. N., 383

——s. 84—

See WILL—VALIDITY OF WILL [6 C. W. N., 787

——s. 86—

See ante, ss. 51, 86, 90.

——s. 87—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT . 5 C. W. N., 377

——s. 90—

See ante, ss. 51, 86, 90.

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*concluded.*

——s. 98—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT. [I. L. R., 26 Bom., 792

——s. 187—

See ante, ss. 4, 12, ETC.

PROBATE DUTY.

See COURT-FEES ACT, SCH. I, ART. 11.

PROCEDURE (CIVIL).

See CIVIL PROCEDURE CODE.

See ALSO THE PARTICULAR HEAD WHICH IS APPLICABLE.

PROCEDURE (CRIMINAL).

See CRIMINAL PROCEDURE CODE.

See ALSO THE PARTICULAR HEAD WHICH IS APPLICABLE.

PROCEEDS OF SALE.

See SALE-PROCEEDS.

PROCESS.

——payment of fees for—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE [I. L. R., 26 Mad., 421

——refusal to issue—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES. [I. L. R., 30 Calc., 508, 508n

——service of—

See SUMMONS, SERVICE OF.

——to compel attendance of witness—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES [I. L. R., 30 Calc., 121

PROCESSION.

——in highway—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE. [I. L. R., 26 Mad., 376

See RELIGION, OFFENCES RELATING TO. [I. L. R., 26 Mad., 554

PROCLAMATION.

See ABSCONDING OFFENDER. [I. L. R., 29 Calc., 417

PRODUCTION OF DOCUMENTS.

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.

PRODUCTION OF PROPERTY.

— *Criminal Procedure Code (Act V of 1898), ss. 94, 96, 517, 523—Security required for produc-* [illegible]

[illegible] to execute a surety bond to the extent of R400, and to hold the ornaments in deposit with him as trust and to produce them when required In the meantime the complainant should have his claim proved by a competent Court" · *Held* that the order, having been made in a matter which had [illegible]

PROFITS.

See MESNE PROFITS

PROMISSORY NOTE

See HINDU LAW—CONTRACT—PROMISSORY NOTE.

See SALE OF GOODS.
[I. L. R., 25 Mad., 580

—— suit on—

See ATTORNEY AND CLIENT.
[I. L. R., 29 Calc., 595

See CONTRACT—WAGERING CONTRACTS.
[I. L. R., 29 Calc., 461

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR
[I. L. R., 26 Mad., 322

See INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE
[I. L. R., 30 Calc., 446

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS
[I. L. R., 24 Mad., 259

PROMISSORY NOTE—*concluded.*

—— suit on—*concluded.*

See NEGOTIABLE INSTRUMENTS—SUMMARY PROCEDURE ON.

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS
[I. L. R., 30 Calc., 627

ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

1.—Endorsement—*Negotiable Instruments Act (XXVI of 1881), s. 51—Promissory note in* [illegible]

such an endorsement cannot operate as an endorse- [illegible] not *ultra vires.* MUHAMMAD KUMARBHALI *v.* RANGA RAO (1901) . I. L. R., 24 Mad., 654

2.—False or forged note—*Debt—Suit for recovery of—Promissory note, false or forged—Whether plaintiff can succeed on proof of loan.*—Where the plaintiffs brought a suit for recovery of [illegible]

3.—Presumption of payment—*Presumption of payment arising from possession of note by debtor—Evidence rebutting presumption—Books of account kept in course of business—Act I of 1872 (Evidence Act), s. 34.*—In a suit on a promissory note, where the note and the security for its payment were in the possession of the defendant: *Held* that, under the circumstances of this case, as shown by the evidence, the *primâ facie* presumption that the note had been paid was rebutted. Books regularly kept in the course of business can, under the Evidence Act, be used, not only for the purpose of refreshing the memory of a witness, but also as corroborative evidence of the story he tells. BHOG HONG KONG *v.* RAMANATHEN CHETTY (1902)
[I. L. R., 29 Calc., 334 :
s.c., 6 C. W. N., 401 ;
L. R., 29 I. A., 43

PROOF.

See ONUS OF PROOF

PROPERTY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT.

See IMMOVABLE PROPERTY.

See JOINT PROPERTY.

See MOVABLE PROPERTY.

——divesting of—

See HINDU LAW—

ADOPTION—EFFECT OF ADOPTION;

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

——found on accused—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE [I. L. R., 30 Calc., 690

——*injury or obstruction to enjoyment of*—

See INJUNCTION—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

——preservation of, pending litigation—

See EXECUTION OF DECREE—STAY OF EXECUTION . . 5 C. W. N., 781

——production of—

See PRODUCTION OF PROPERTY.

——restitution of—

See CRIMINAL PROCEDURE CODE, s. 522. [5 C. W. N., 250

——seized by police—

See CRIMINAL PROCEDURE CODE, s. 523.

PROPRIETARY RIGHT.

——exercise of—

See CONTRACT—BREACH OF CONTRACT [7 C. W. N., 563

PROSECUTION.

See MALICIOUS PROSECUTION.

See SANCTION FOR PROSECUTION.

——commencement of—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.

——revival of—

See CRIMINAL PROCEDURE CODE, s. 437.

See REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED.

——stale—

See RIOTING . 7 C. W. N., 245, 301

PROSTITUTE.

——adoption by—

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT. [I. L. R., 26 Bom., 491

——removal of—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE—REMOVAL OF PROSTITUTES.

PROVIDENT FUNDS ACT (IX OF 1897).

—s. 4—*Insolvent Debtors' Act (11 & 12 Vict., c. 21), ss. 7, 30—Vesting order—Sum due to an insolvent from a Provident Institution—Right of Official Assignee to claim—Construction of Statutes—Distinction between enactments affecting vested rights and those regulating procedure.*—A member of a Railway Provident Institution, who had made compulsory deposits

date of the vesting order, but before the retirement of the insolvent, the Provident Funds Act, 1897, came into force, s. 4 of which provides that, after the commencement of that Act, the Official Assignee shall not be entitled to or claim any such compulsory deposits in any Railway Provident Fund.

enactments affecting vested rights and those which merely affect procedure recognized. *Javanmal Jitmal v. Muktabai, I. L. R., 14 Bom., 516,* referred to. Under s. 7 of the Insolvent Debtors' Act, the right of the insolvent to be paid the sum standing to his credit in the fund, on his retirement from service, vested in the Official Assignee OFFICIAL ASSIGNEE OF MADRAS v. DALGAIRNS (1902) . I. L. R., 26 Mad., 440

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DAMAGES. [I. L. R., 26 Mad., 176

——s. 15—

See SMALL CAUSE COURTS, MOFUSSIL—JURISDICTION—RENT. [I. L. R., 24 Mad., 356

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concluded.*

——s. 15 and Sch. II, Art. 35 (j).

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT. [I. L. R., 25 Mad., 540

——s. 16—

See MUNSIF . I. L. R., 26 Mad., 212

——s. 18—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—GENERAL CASES . I. L. R., 25 Bom., 528

——s. 23—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TITLE, QUESTION OF. [I. L. R., 25 Bom., 625
6 C. W. N., 687

——s. 32—

See MUNSIF . I. L. R., 26 Mad., 212

——Sch. II, cl. (8)—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT [I. L. R., 24 Mad., 356

————cl. (13)—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—IMMOVABLE PROPERTY. [I. L. R., 23 All., 437

————cl. (18)—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TRUSTS. [I. L. R., 24 All., 208
I. L. R., 26 Mad., 200, 368

————cl. (21)—

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD . I. L. R., 28 Calc., 235

————cl. (31)—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—

IMMOVABLE PROPERTY;

MESNE PROFITS

————cl. (35) (j)—

See ante, s 15 AND SCH. II, ART. 35 (j).

————cl. (35) (k)—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ATTACHMENT. [I. L. R., 26 Mad., 504

———— cl. (38)—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MAINTENANCE. [I. L. R., 23 All., 495

PROVOCATION.

See DAMAGES—SUITS FOR DAMAGES—TORT . . . 6 C. W. N., 915

See MURDER . I. L. R., 28 Calc., 571

PROXY.

See COMPANY—MEETINGS AND VOTING. [I. L. R., 27 Bom., 113

PUBLIC BODY.

—— protection of—

See MADRAS CITY MUNICIPAL ACT, 1884, ss 392, 433 AND 458. [I. L. R., 25 Mad., 118

PUBLIC CONVEYANCES.

See HACKNEY-CARRIAGE ACT.

PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880).

1.—*Bengal Act VII of 1868, s. 2—Suit to set aside a sale in execution of a certificate—Act XI of 1859—Civil Procedure Code, ss 244, 312.*—*Held* by the Full Bench (RAMPINI, J, dissenting) that an appeal to the Commissioner under s 2 of Bengal Act VII of 1868 is not the only remedy [illegible]

overruled. RAM TARUCK HAZRA *v.* DILWAR ALI (1901) . . . I. L. R., 29 Calc., 73; [s.c., 5 C. W. N., 521

2.—*Sale in execution of a certificate against the recorded tenant alone, whether it passes the entire holding*—A certificate under the Public Demands Recovery Act can only be enforced, against the person whose name is entered in such certificate, as if it were a personal debt of his So where, in execution of a certificate taken against the recorded tenant, the landlord put the holding to sale: *Held* that the right, title and interest of the recorded tenant alone, and not the entire holding, passed by the sale. The interest of the other joint tenants was not affected by the sale *Shekaat Hossein* v. *Sasi Kar (1892), I. L. R, 19 Calc, 783,* referred to *Jeolal Singh* v. *Ganga Pershad (1884), I. L. R., 10 Calc, 996,* and *Nitayi Behari* v. *Hargobind (1899), I L. R, 26 Calc, 677,* distinguished. RUPRAM NAMASUDRA *v.* ISWAR NAMASUDRA (1902) . . 6 C. W. N., 302

—— ss. 2, 7 (l), 8 (b), 10, 10—

—*Agriculturists' Loans Act (XII of 1884), s. 5—Taccavi—What passes at a sale under the Public Demands Recovery Act—Right, title and interest of the judgment-debtor—Hypothecation of land—Mortgage—Transfer*

PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880)—*concluded.*

—— ss. 2, 7 (*1*), 8 (*b*), 10, 19—*concluded.*

of Property Act (IV of 1882), ss. 67, 99—Act XI of 1859, s. 5—Bengal Act VII of 1868, s. 1—Revenue-sale law.—When property is sold in enforcement of a certificate under Bengal Act VII of 1880, filed by the Collector to recover an amount due to the Government for an advance made under the Agriculturists' Loans Act, nothing but the judgment-debtor's right, title and interest in the property at the date of service of the notice under s. 10 of Bengal Act VII of 1880 can pass to the purchaser. Such a sale has not the effect of a sale for arrears of land-revenue, or of an assignment to the purchaser of the mortgage-interest created in favour of the Government by the bond executed by the judgment-debtor under the Agriculturists' Loans Act. LACHMI NARAIN SINGH *v.* NAND KISHORE LAL DAS (1902) . . . I. L. R., 29 Calc., 537; [s.c., 6 C. W. N., 484

—— ss. 8, 10, 12—

—*Ben. Act I of 1895, s. 15—Sale, setting aside—* [illegible]

[illegible]

—— s. 10—

See ante —
ss. 2, 7 (*1*), 8 (*b*), 10, 19;
ss. 8, 10, 12.

—— s. 12—

See ante, ss. 8, 10, 12.

—— s. 19—

See ante, ss. 2, 7 (*1*), 8 (*b*), 10, 19.

—*Suit to set aside a sale in execution of a certificate—Ben. Act I of 1895, ss. 19, 20—Act XI of 1859—Civil Procedure Code, ss 11, 244, 287, 311,* [illegible] t aside a sale, [illegible] der the Public [illegible] civil nature, [illegible] by s. 312 of [illegible] ARUCK HAZRA [illegible] 29 Calc., 94; [s.c., 6 C. W. N., 246

PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895).

—— s. 7—

See BENGAL TENANCY ACT, s. 107. [I. L. R., 28 Calc., 678

See LAND REGISTRATION ACT (BEN. ACT VII OF 1876), s. 82. [7 C. W. N., 568

—— ss. 7, 8, 19, 23—

See PENAL CODE, s. 206. [I. L. R., 28 Calc., 217

—— s. 10—

—*Sale, setting aside of—Service of notice—Civil Procedure Code (Act XIV of 1882), s 244*—Where the certificate was not duly served under the provisions of s. 10 of the Public Demands Recovery Act: *Held* that there could be no execution, and that the proceedings held under such certificate were bad. S. 244, Civil Procedure Code, does not apply to the case of execution proceedings held under the Public Demands Recovery Act. *Ram Tarak Hazra v. Mozahebali Khan (1901), 6 C. W. N., 246*; and *Janki Das v. Ram Golam Sahu (1901), 6 C. W. N, 331*, relied upon. RAMRUP SAHAY *v.* KHUSHAL MISSER (1902) . 6 C. W. N., 630

—— ss. 10, 17 and 21—

—*Sale for arrears of cesses—Suit to set aside sale on the ground that no notice was issued under s. 10 of the Act, whether maintainable—Civil Procedure Code (Act XIV of 1882), s. 244, applicability of.*—A suit to set aside a sale held for arrears of cesses, on the ground that no notice of the certificate, under s. 10 of the Public Demands Recovery Act (Ben. Act I of 1895), was served [illegible]

[illegible] *Chunder Kumar Mukerjee v. Secretary of State (1900), I. L. R., 27 Calc., 698*, and *Ram Tarack Hazra v. Dilwar Ali (1901), 5 C. W. N., 521*, followed. JANKI DASS *v.* RAM GOLAM SAHU (1901) [I. L. R., 28 Calc., 813; s.c., 6 C. W. N., 331

—— s. 15—

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880), ss 8, 10, 12. [5 C. W. N., 86

—— ss. 15, 19, 32 and 33—

—*Sale in execution of certificate—"Final," meaning of—Appeal—Review—Revision—Power of revision by Commissioner.*—A suit to set aside a sale in execution of a certificate under the Public Demands Recovery Act is maintainable in the Civil

PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895)—*concluded.*

—— ss. 15, 19, 32 and 33—*concluded.*

Court. *Ram Taruck Hazra v. Dilwar Ali (1901), I. L. R., 29 Calc., 73,* referred to. An order made by a Certificate Officer under s. 19 of Bengal Act I of 1895 is final only in the sense that it shall not be open to appeal as provided by s. 32 of that Act, but not in the sense that it shall not be open to review or revision by the Commissioner under s. 33 of the same Act. *Nasiruddin Khan v. Indronarayan Chowdhry (1866), B. L. R., Sup Vol., 867;*

——s. 17—

See ante, ss. 10, 17 and 21.

——s. 19—

See ante—

ss. 7, 8, 19 22;

ss. 15, 19, 32 and 35.

—— ss. 19, 20—

See Public Demands Recovery Act (Ben. Act VII of 1880), s. 19. [I. L. R., 29 Calc., 94

——s. 21—

See ante, ss. 10, 17 and 21.

——s. 22—

See ante, ss. 7, 8, 19, 22.

——ss. 32 and 33—

See ante, ss. 15, 19, 32 and 33.

PUBLIC DUTY.

See Libel . I. L. R., 27 Bom., 585

See Malicious Search [I. L. R., 27 Bom., 590

PUBLIC HIGHWAY.

See Public Road, Highway, Street or Thoroughfare.

PUBLIC INTEREST.

See Privileged Communication [7 C. W. N., 346

PUBLIC NUISANCE.

See Nuisance—Under Criminal Procedure Code.

PUBLIC OFFICER.

See Public Servant.

PUBLIC OFFICER—*concluded.*

——power of Government over—

See Secretary of State. [I. L. R., 27 Bom., 189

——suit against—

See Privileged Communication. [7 C. W. N., 346

See Secretary of State. [I. L. R., 26 Mad., 263

——suit to set aside order of—

See Limitation Act, 1877, Sch. II, Art. 14

—*Civil Procedure Code (Act XIV of 1882), ss. 2 and 424—Notice of suit Official Assignee—Practice—Procedure*—The Official Assignee is a public officer, within the meaning of s. 2 of the

Haji Alli v. Kemp (1902) [I. L. R., 26 Bom., 809

PUBLIC POLICY.

——agreements contrary to—

See Contract Act, s 23—Illegal Contracts—Against Public Policy.

See Endowment. [I. L. R., 26 Mad., 31

See Hindu Law—Husband and Wife. [I. L. R., 28 Calc., 751

See Madras Abkari Act. [I. L. R., 24 Mad., 401

PUBLIC RECORD.

See Evidence Act, s 35.

PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE.

——obstruction to—

See Nuisance—Under Criminal Procedure Code

See Obstruction—To Public Way.

See Right of Suit—Obstruction of Public Highway.

——procession in—

See Religion, Offences relating to. [I. L. R., 26 Mad., 554

——regular line of street—

See Bombay City Municipal Act (Bombay Act III of 1888), s 297. [I. L. R., 25 Bom., 107

——what constitutes a "public street"—

See Bombay District Municipal Act (Bombay Act VI of 1873), ss. 17, 43 and 64 . I. L. R., 25 Bom., 315

1.—Obstruction by owner of abutting property—*Madras District Municipalities Act*

PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE—*concluded.*

(Mad. Act IV of 1884, as amended by Mad. Act III of 1897, s. 6), s. 3, cl. 27—"Street"—Effect

rights of the owner in the site or soil over which the street exists. It does not own the soil from the centre of the earth *usque ad cœlum*, but it has the exclusive right to manage and control the surface of the soil, and so much of the soil below and of the space above the surface as is necessary to enable it adequately to maintain the street as a street. It has also a certain property in the soil of the street, which would enable it, as owner, to bring a possessory action against trespassers. The effect of Art 146A of Sch. II to the Limitation Act considered. *Municipal Commissioners for the City of Madras v. Sarangapani Moodaliar, I. L. R., 19 Mad., 154,* commented on. SUNDARAM AYYAR *v.* MUNICIPAL COUNCIL OF MADURA (1901)
[I. L. R., 25 Mad., 635

the rights of property enjoyed by others, or cause a public nuisance or interfere with the ordinary use of the streets by the public, and subject to directions or prohibitions for the prevention of obstructions to thoroughfares or breaches of the peace. Every member of the public, and every sect, has a right to use the streets in a lawful manner, and it lies on those who would restrain him in its exercise to show some law, or custom having the force of law, depriving him of the privilege. SADAGOPACHARIAR *v.* RAMA RAO (1902) . . . I. L. R., 26 Mad., 376

PUBLIC SERVANT.

See ABSCONDING OFFENDER.
[I. L. R., 29 Calc., 417

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE.

See LAND-MARKS.
[I. L. R., 30 Calc., 1084

See PUBLIC OFFICER.

——assaulting—

See ASSAULT ON PUBLIC SERVANT.

See POLICE ACT (V OF 1861), ss. 17, 19.
[I. L. R., 28 Calc., 411

See THUMB IMPRESSIONS.
[I. L. R., 30 Calc., 97

——contempt of authority of—

See CONTEMPT OF COURT.

PUBLIC SERVANT—*continued.*

——disobedience of order of—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . . 5 C. W. N., 329

——obstruction of—

See PENAL CODE, s. 186.
[6 C. W. N., 120
I. L. R., 30 Calc., 285

——offering bribe to—

See ACCOMPLICE.
[I. L. R., 26 Bom., 193

——prosecution of—

See ADMINISTRATOR GENERAL.
[I. L. R., 30 Calc., 927

——sanction of—

See SANCTION FOR PROSECUTION.

1.—Assistance to—*Penal Code (Act XLV of 1860), s. 187—Rendering assistance to a public servant—Refusal to sign search list, by person who attended search under Abkari law—Liability—Criminal Procedure Code (Act V of 1898), s. 103 (1)—Party called upon to attend and witness a search*—A person was called upon by an Abkari Inspector to attend a search held under s. 103 of the Code of Criminal Procedure, and did so. He,

Code, to render is *ejusdem generis* with the various forms of assistance referred to in the latter part of

2.—Illegal gratification—*Penal Code (Act XLV of 1860), ss. 161, 165—Receiving illegal gratification as a public servant—Gratification received partly on one day and partly on another—Continuous offence—Conviction for separate offences, if proper.*—Where a certain sum of money is paid to a public servant as illegal gratification on one day, and a certain sum on another day for the same purpose, the offence of receiving illegal gratification becomes a continuous offence, and there ought not to be separate convictions for offences under ss. 161 and 165 of the Penal Code for the same offence. JAGAT CHANDRA SARMA *v.* LAL CHAND DAS (1901) . . . . . 5 C. W. N., 332

3.—Peon—*Peon attached to office of Superintendent of the Salt Department—Manager of*

PUBLIC SERVANT—*concluded.*

estate under Court of Wards—Penal Code (Act XLV of 1860), s. 21, cl. 9.—An officer in the service or pay of the Government, within the terms of s. 21, cl (9), of the Penal Code, is one who is appointed to some office for the performance of some public duty. *Held* that a peon in the service and pay of the Government, and attached to the office of a Superintendent

[illegible]

tenants not to pay rent to Receiver—Penal Code (Act XLV of 1860), ss. 174, 175, 186 and 188—Land Registration Act (Ben. Act VII of 1876), s. 56.—*Held* that a Receiver appointed under s. 56 of the Land Registration Act is not a public servant

[illegible]

PUBLIC STREET.

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE

PUBLIC THOROUGHFARE.

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE.

PUBLICATION.

See DEFAMATION.

See PRIVILEGED COMMUNICATION. [7 C. W. N., 246

PUNISHMENT.

—— effect of non-publication of notification—

See EMBANKMENT . 7 C. W. N., 286

—— form of—

See SENTENCE.

PUNJAB LAWS ACT.

—— IV of 1872 (as amended by Act XII of 1878), ss. 10, 12, 14—

—*Pre-emption—"Village community"—Occupancy tenants in zamindari village.*—The expres-

[illegible]

used to denote a body of persons bound together by the tie of residence in one and the same village, amenable to the village customs, and subject to the administrative control of the village officers A "village community" is not confined to the landowners in the village. Occupancy tenants are members, within the meaning of the Punjab *Laws Act*, and so are all persons in an inferior position who belong to the village, though they may be unconnected with the land and not entitled to any right of pre-emption under the Act. RAHIMUDDIN *v.* REWAL (1903) . . . I. L. R., 30 Calc., 635: s.c., 7 C. W. N., 498; *L. R., 30 I. A., 89*

PURCHASE-MONEY.

See PRE-EMPTION—PURCHASE-MONEY.

—— construction of agreement to re-convey on re payment of—

See VENDOR AND PURCHASER—MISCELLANEOUS CASES . 6 C. W. N., 192

—— failure to pay—

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

—— refund of—

See SALE IN EXECUTION OF DECREE—

ERRORS IN DESCRIPTION OF PROPERTY SOLD; [I. L. R., 29 Calc., 370

SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY.

—— suit to recover—

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . . 7 C. W. N., 105

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY.

PURCHASER.

See BENAMI TRANSACTION—CERTIFIED PURCHASERS.

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUIT. [6 C. W. N., 127 7 C. W. N., 54

See LIS PENDENS.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING. [I. L. R., 30 Calc., 755

See SALE IN EXECUTION OF DECREE—

JOINT PROPERTY; [I. L. R., 23 All., 355

PURCHASERS, TITLE OF.

SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

See VENDOR AND PURCHASER.

—— bonâ fide—

See LIMITATION ACT, 1877, SCH. II, ART. 134.

—— effect of introduction of, into joint family—

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENER.

—— from heir—

See LETTERS OF ADMINISTRATION. [I. L. R., 28 Calc., 587

—— from Hindu widow —

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

—— from members of Hindu family—

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS.

—— liabilities of—

See BENGAL REGULATION VIII OF 1819, s. 9 . . . 7 C. W. N., 111

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT. 7 C. W. N., 203

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

—— of endowed property—

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

—— of equity of redemption—

See MORTGAGE—SALE OF MORTGAGED PROPERTY.

See TRANSFER OF PROPERTY ACT, s. 99. [I. L. R., 30 Calc., 463

PURCHASER—*concluded*.

—— of joint family property—

See HINDU LAW—ALIENATION.

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

—— of right, title and interest of widow—

See HINDU LAW—WIDOW—DECREES AGAINST WIDOW, AS REPRESENTING THE ESTATE, OR PERSONALLY.

—— rights of—

See HINDU LAW—

PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENER;

WIDOW—DECREES AGAINST WIDOW, AS REPRESENTING THE ESTATE, OR PERSONALLY.

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . . 7 C. W. N., 105

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

See SALE FOR ARREARS OF REVENUE—

INCUMBRANCES—ACT XI OF 1859; [I. L. R., 30 Calc., 1071

PURCHASERS, RIGHTS AND LIABILITIES OF.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

—— of title of—

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

Q

QUESTION OF FACT.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—CONCURRENT JUDGMENTS ON FACTS.

See PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS.

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTION OF FACT.

QUESTION OF LAW.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

See ESTOPPEL—ESTOPPEL BY JUDGMENT. [I. L. R., 28 Calc., 318

R

RAILWAY COMPANY.

See Prevention of Cruelty to Animals Act (XI of 1890), s 3
[I. L. R., 26 Bom., 609

See Railways Act.

1.—Liability of Company—*Passengers—Responsibility of a Railway Company, in the care of passengers—Injury to the latter by the illegal act of a fellow passenger—Indian Railways Act (IX of 1890), s 59—Negligence*—The legal obligation upon a Railway Company to exercise due care and skill in carrying passengers does not extend so far that the Company can be held responsible, under all circumstances, for not carrying them safely. Negligence alleged against them must be proved affirmatively, where denied. It was not the duty of the railway servants to search every parcel that passed the ticket barrier, carried by a passenger. Words in [illegible] of the Chief Justice Q. B., in *Collett* [illegible] *ty Com-* [illegible] "carry [illegible] neglect" had been proved against the Company or their servants, the decrees below were recommended for reversal, and the suit for dismissal. East Indian Railway Company *v.* Kalidas Mukerji (1901)
[I. L. R., 28 Calc., 401:
s.c., 5 C. W. N., 449; L. R., 28 I. A., 144

2. ———— *Act IX of 1890 (Indian* [illegible]

3. ———— *Carriage of goods—Contract—Formation of contract—Rules of Company for consignment of goods—Re-booking of goods after arrival at original destination—Instructions to Station-master to re-book*—The rules of a Railway Company prescribed certain procedure for the booking of goods. In accordance with those rules, certain goods were booked from Trichinopoly to Bagalkot. The plaintiff requested *A*, the goods clerk and Station-master at Hotgi (on defendants' railway), to have the goods re-booked from Bagalkot to Hotgi, and for this purpose handed him the railway receipt, with a written application, which, however, was not in the form of consignment used by the Company *A accordingly sent a service telegram* [illegible] Bagalkot asking him to [illegible]

Company had not contracted with the plaintiff to carry the goods from Bagalkot to Hotgi The mere fact that the plaintiff got *A*, the Station-master at Hotgi, to send a service telegram to Bagalkot did not constitute a contract to bind the Company. Malkarjun Shidapa *v.* Southern Maratha Railway Company (1902)
I. L. R., 27 Bom., 126

4. ———— *Negligence in construction* [illegible] *for damage to land by causing* [illegible]

possible in the exercise of [illegible]
The injunction should be in general terms, restraining the defendants from flooding, and should not direct the execution of specified works. *Lawrence* v. *Great Northern Railway Company (1851), 16 Q. B., 643; Broadbent* v. *Imperial Gas Company (1857), 7 DeG. M. & G., 436; Bagnall* v. *London* [illegible] *Western Railway Company (1861), 7 H.* [illegible]

[illegible] I. A., [illegible]
7 C. W. N., 393

5. ———— *Consignment of goods—Diversion of consignment while en route—Delivery to the original consignee—Liability of the Railway Company—Railways Act (IX of 1890), s. 77—Notice—Second appeal—Plea of want of notice, whether allowable—Practice*—*G* booked a consignment of goods from the Sakrigali Ghat Station

RAILWAY COMPANY—*concluded.*

on the East Indian Railway to *R* at Kamptee, a station on the Bengal-Nagpur Railway. Whilst the consignment was *en route* to Kamptee, *G* directed the railway servants at Sakrigali Ghat Station to notify to the Station-master at Kamptee to deliver the consignment to plaintiff at Nargaon. This direction was given; but, disregarding the order, the Station-master at Kamptee delivered the consignment to *R* at Kamptee. The plaintiff sued the East Indian Railway to recover compensation for loss of goods. *Held* that the Railway Company was liable in damages; the case was a simple case of breach of contract; the defendant contracted to carry the goods and deliver them at Nargaon to the plaintiff, and failed to do so. *Held, further,* that the liability of the Railway Company was not affected

action arose. CHHAGANLAL SHALIGRAM SHET *v.* EAST INDIAN RAILWAY COMPANY (1903)

[I. L. R., 27 Bom., 597

RAILWAY SERVANTS.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY

[I. L. R., 30 Calc., 713

RAILWAYS ACT (IX OF 1890).

—— ss. 7 to 12—

See RAILWAY COMPANY.

[I. L. R., 27 Bom., 344

—— ss. 7, 10 and 11—

—— s. 47—

See RAILWAY COMPANY

[I. L. R., 23 All., 367

RAILWAYS ACT (IX OF 1890)—*continued.*

—— s. 59—

See RAILWAY COMPANY—LIABILITY OF COMPANY . I. L. R., 28 Calc., 401

—— s. 72—

—*Risk Note, Form B—Indian Contract Act (IX of 1872), ss. 151, 152, 161—Railway Company—Goods, loss of—Bailee—Suit for compensation.*—A special agreement, known as "Risk Note, Form B," sanctioned by the Governor General in Council under s 72, cl. (2), of the Indian Railways Act, absolves a Railway Company from all liability for loss of goods from any cause whatsoever. The Company, in such a case, is not a bailee under the Indian Contract Act. TOONYA RAM *v.* EAST INDIAN RAILWAY COMPANY (1902)

[I. L. R., 30 Calc., 257; s.c., 7 C. W. N., 370

—— s. 77—

See RAILWAY COMPANY.

[I. L. R., 27 Bom., 597

—— ss. 77 and 140—

—*Claim against Railway Company—Notice of claim.*—The plaintiff sued the Bombay, Baroda and Central India Railway Company and the East Indian

merits, the suit was dismissed as against the Bombay, Baroda and Central India Railway Company, but a decree was passed against the East Indian Railway Company for R4,017. It appeared that no notice of plaintiff's claim under s. 140 of the Indian Railways Act (IX of 1890) had ever been directly

once informed the East Indian Railway Company of the plaintiff's claim, and had given notice that, in case the plaintiff sued them, they would expect the East Indian Railway Company to bear all the expenses. Further correspondence took place between the two Companies with reference to the plaintiff's claim, and, on the 31st October, 1898, the Solicitors of the East Indian Railway Company wrote to the plaintiff's Solicitors as follows: "DEAR SIRS,—Your letter of the 21st instant, to the address of the General Traffic Manager, Bombay, Baroda and Central India Railway, Bombay, has been handed to us by our clients, the East Indian Railway, Calcutta, claiming on behalf of your clients a sum of R7,437, being the amount of loss alleged to have been sustained in respect of short delivery of 500 and 125 bags of wheat. The file of papers has just been handed to us, and we will write to you further as soon as we have had an opportunity of going through

RAILWAYS ACT (IX OF 1890)—*concluded.*

—— ss. 77 and 140—*concluded.*

same Yours faithfully, (*Signed*) MORGAN & Co"

[illegible]

INDIAN RAILWAY COMPANY *v.* JETHMULL RAMANAND (1902) . . I. L. R., 26 Bom., 669

—— s. 128—

See JOINDER OF CHARGES.
[I. L. R., 29 Calc., 385

—— s. 140—

See ante, ss. 77 AND 140.

RAIYAT.

See BENGAL TENANCY ACT.

See ENHANCEMENT OF RENT.

See LANDLORD AND TENANT.

See RIGHT OF OCCUPANCY.

—— and tenure-holder; distinction between—

See BENGAL CESS ACT, s 4.
[5 C. W. N., 535

—— interest of—

See MORTGAGE - REDEMPTION—RIGHT OF REDEMPTION . . 5 C. W. N., 85

—— non-occupancy; suit by, for recovery of possession—

See LIMITATION ACT, 1877, SCH. II, ART. 3
[7 C. W. N., 218

RAJ, SUCCESSION TO.

See HINDU LAW—
CUSTOM—
IMPARTIBILITY;
PRIMOGENITURE
[I. L. R., 29 Calc., 343
INHERITANCE—IMPARTIBLE PROPERTY.

RAPE.

See ADULTERY . I. L. R., 29 Calc., 415

RASH AND NEGLIGENT ACT.

—*Penal Code (Act XLV of 1860), s 336—Rash and negligent act likely to endanger human life or personal safety of others—Swinging by hooks*

[illegible]

RATIFICATION.

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS.
[6 C. W. N., 905

See PRINCIPAL AND AGENT—RATIFICATION.

—— of lease—

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 27 Bom., 515

REASONABLE AND PROBABLE CAUSE.

See MALICIOUS PROSECUTION.

RECEIPT.

See STAMP ACT (II OF 1899), ss. 35 AND 42 . . I. L. R., 24 All., 374

—— of rent from various tenants, for one holding—

See BENGAL TENANCY ACT, s 88.
[6 C. W. N., 823

RECEIVER.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[5 C. W. N., 91

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15 . I. L. R., 21 Mad., 611

See PARTIES—PARTIES TO SUITS—RECEIVER.

See PLAINT—AMENDMENT OF PLAINT.
[I. L. R., 30 Calc., 609

—— appointed under Land Registration Act (Ben. Act VII of 1876)—

See PUBLIC SERVANT.
[I. L. R., 20 Calc., [illegible]

—— sale by—

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
[5 C. W. N., [illegible]

RECEIVER—*continued.*

1.—Accounts—*Exceptions to accounts—Mofussil accounts—Receiver, liability of—Procedure—Practice—Costs—Civil Procedure Code (Act XIV of 1882), s. 503.*—A Receiver is responsible for all properties which come into his custody or manage-

involves the inquiry whether all his collections, made on behalf of the property of which he is the Receiver, are duly entered in the accounts and, next, whether all his disbursements are payments properly made in respect of that property. A Receiver's liability is not restricted to matters shown upon his accounts. If there is any liability attaching to the Receiver, other than that which appears on the face of the accounts, the proper course is to sue the Receiver for the purpose of establishing that liability. Questions with regard to the soundness or prudence of the system of management adopted by a Receiver, or charges of wilful default or neglect, are not matters that can be disposed of in the shape of exceptions to accounts. Even where a *primâ facie* case of the responsibility of the Receiver for malpractices of his servants is made out, an inquiry into such practices is foreign to an application to pass Receiver's accounts. The objection that a Receiver has not included in his accounts collections made in the mofussil, cannot be dealt with upon an application to pass his accounts. If a *primâ facie* ground is made out of the accountability of the Receiver for the mofussil collections, the proper course is either to postpone the passing of the accounts until the question of the Receiver's liability is established by suit, or to pass the accounts, reserving the right of the parties to establish any claim they may make against the Receiver in a suit properly framed for the purpose. SATTYA SANKAR GHOSAL *v.* GOLAPMONEE DEBEE (1900)
[5 C. W. N., 223

2.—Appointment—*Title to property—Removal of property.*—In an application for the

give rise to suspicion, during the pendency of a suit in which the question of title to that property is to be determined, is in itself a sufficient ground for the appointment of a Receiver. SHAM CHAND GIRI *v.* BHAYA RAM PANDAY (1894)
[5 C. W. N., 365

3. ———— *Waste.*—The suit relates to a certain *mohurtship* which became vacant by the death of one *J*, the former *mohunt*, who died on the 8th September, 1899. *M*, who was the plaintiff, and the nephew of the deceased, alleged that he was installed as *mohunt* on the 2nd September; *S*, the defendant, who was in possession, alleged that he was installed as *mohunt* on the 12th September by a *punchayet*. Plaintiff applied for appointment of a Receiver; and, in support of his allegation as to his installation, he relied upon a considerable number of affidavits of most respectable witnesses. It was admitted that *S* was installed as *mohunt* as alleged. There was great reason to believe that since he took possession of the property he had committed gross waste. *Held*, in the circumstances, that it was a fit case in which a Receiver should be appointed. In an application for the appointment of a Receiver in a suit where the title to certain properties, in the possession of the defendant, is in dispute, it is not necessary that a strong case should be made out; it is sufficient if a fair *primâ facie* case is made out. *Sidheswari Debi v. Abhoyeswari Debi (1888), I. L. R., 15 Calc., 818; Chandidat Jha v. Padmanand Singh (1895), I. L. R., 22 Calc., 459; Sham Chand Giri v. Bhaya Ram Pandey (1894), 5 C. W. N., 365*, referred to. MOHUNT SIARAM DAS *v.* MOHUNT MOHABIR DAS (1899) . . . 5 C. W. N., 382

4. ———— *Practice—Application for appointment of Receiver, whether to be made in Chambers or in Court.*—An application for the appointment of a Receiver on the retirement of another Receiver should be made in Court, and not in Chambers. STALKARTT *v.* STALKARTT (1900)
[I. L. R., 28 Calc., 250

5. ———— *Civil Procedure Code (Act XIV of 1882), s. 503—Appointment of Receiver in a mortgage suit.*—A Receiver can be appointed under s 503 of the Civil Procedure Code in a suit to enforce a mortgage. *Womda Khanum v. Rajroop Koer (1877), I. L. R., 3 Calc., 835*, explained. GHANASHYAM MISSER *v.* GOBINDA MONI DASI (1902) . . . . 7 C. W. N., 452

6.—Contempt—*Contempt proceedings—Appeal—Receiver appointed pending appeal—Appeal no longer pending—Discharge of Receiver—Jurisdiction of Court.*—There is nothing to prevent the Receiver of a property appointed by the Court from himself applying for taking proceedings

passed by it. GREY *v.* WOOGRAMOHUN THAKUR (1901) . . . I. L. R., 28 Calc., 790

7.—Debt incurred by Receiver—*Creditor, right of suit by—Estate, liability of—Receiver, personal liability of—Executor or Trustee, nature of liability of.*—A creditor is entitled to proceed against the representative of an estate for recovery of debt incurred by the Receiver during the management of the estate by him: the right to maintain such suit against the representative is founded on the just and equitable

RECEIVER—*continued.*

principle that, as the acts of a Receiver, acting within his authority, are the acts of the Court, the estate

...itions ...rd v. ...med. ...te in ...or or ...under directions of the Court, do not and cannot under

8.—**Discharge**—*Administration suit—Discharge of Receiver before completion of administration decree.*—No order can be made for the discharge of a Receiver appointed in an administration suit, and directing him to make over possession of the estate to the plaintiff, before the completion of the administration decree. BHUGWAN DAS SUREKA *v.* HEERA LAL (1901) . . 5 C. W. N., 417

9.—**Leave to sue**—*Making Receiver party to a suit.*—When a Receiver has been appointed for property, the leave of the Court should be taken to bring

s.c., 7 C. W. N., 390

11. ———— *Suit against Receiver to recover amount not recovered by Receiver owing to alleged negligence—Necessity for leave of the Court.*—When a party feels aggrieved at the conduct of a Receiver, he should seek redress against the Receiver in the proceeding in which he was appointed. If separate proceedings be taken against him, either

RECEIVER—*concluded.*

12. ———— *Party to criminal proceedings—Leave of Court—"Owner"—Calcutta Municipal Act (Bengal Act III of 1899), ss 3, 320, 574.*—A Receiver appointed by the High Court is not the "owner" of the property of which he has been appointed Receiver, within the

13.—**Remuneration**—*Agreement to pay salary of Receiver—Position of Receiver—Civil Procedure Code (Act XIV of 1882), s 503.*—A promise to pay the salary of a Receiver without leave from the Court, even if unconditional, being in contravention of the law,

Dassee (1895), I. L. R., 23 Calc., 649, referred to. PROKASH CHANDRA SARKAR *v.* ADLAM (1903) **[I. L. R., 30 Calc., 696**

RECITALS IN DOCUMENTS.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENT . . 5 C. W. N., 158

See REGISTRATION ACT (III OF 1877), ss. 50 AND 17 . **[I. L. R., 27 Bom., 453**

See TRANSFER OF PROPERTY. **[L. R., 28 I. A., 46**

RECOGNIZANCE TO APPEAR.

—*Bail-bond—Guarantee by surety for appearance of accused before a certain Magistrate—Non-appearance of accused before different Magistrate—Bond, forfeiture of—Criminal Procedure Code (Act V of 1898), s 514.*—Where a surety executed a bail-bond guaranteeing that the person, for whom he stood surety, would appear at the Court of a Deputy Magistrate before whom the case was pending, and the accused failed to appear before the District Magistrate, to whose file the case had been transferred: *Held* that there had been no breach of the conditions of the bail-bond, and that the order forfeiting it under s. 514 of the Criminal Procedure Code should be set aside. SHAMSUDDIN SIRKAR *v.* EMPEROR (1902) . . I. L. R., 30 Calc., 107; s.c., 6 C. W. N., 885

RECOGNIZANCE TO KEEP PEACE.

See Evidence—Criminal Cases—Character . I. L. R., 25 All., 273

See Magistrate—Powers of Magistrates . I. L. R., 29 Calc., 389

See Possession, Order of Criminal Court as to—Likelihood of Breach of the Peace . 6 C. W. N., 883 [7 C. W. N., 29 I. L. R., 30 Calc., 443

See Nuisance—Under Criminal Procedure Code . 7 C. W. N., 142

See Transfer of Criminal Case—General Cases . I. L. R., 24 All., 151

1. MAGISTRATE WITH POWERS OF APPELLATE COURT.

1.—*Order—Omission of express finding as to commission of offence within the section—Illegality—Jurisdiction—Criminal Procedure Code (Act V of 1898), ss. 106 and 423—Penal Code (Act XLV of 1860), s. 379.*—Where a Subordinate Magistrate convicted the prisoner, under s. 379 of the Penal Code, of theft, and the District Magistrate on appeal merely affirmed the conviction and added to his judgment an order under s. 106 of the Criminal Procedure Code binding over the petitioner to keep the peace: *Held* that he was not competent to pass such an order, except on an express finding that the petitioner had committed an offence within the terms of s. 106. Kinoo Sheikh *v.* Darastullah Mollah (1902)

[I. L. R., 29 Calc., 393; s.c., 6 C. W. N., 676

2. WHEN RECOGNIZANCE MAY BE TAKEN.

2.—*Criminal Procedure Code, s. 106—Binding down to keep the peace, order for.*—S. 106 of the [illegible]

[5 C. W. N., 250

3.—*Security for keeping the peace on conviction, order for—Offences not within the terms of s. 106 of the Code* [illegible]

incidents, come within the terms of s. 106 of the

RECOGNIZANCE TO KEEP PEACE—*continued.*

2. WHEN RECOGNIZANCE MAY BE TAKEN—*continued.*

[illegible] (1899), I. L. R., 26 Calc., 870, followed. Baidya Nath Majumdar *v.* Nibaran Chunder Gope (1902) . . . I. L. R., 30 Calc., 93; [s.c., 6 C. W. N., 471

4.—*Criminal Procedure Code (Act V of 1898), s. 106, order under, when proper—House-trespass—Breach of peace—Penal Code, s. 448.*—An order under s. 106, Code of Criminal Procedure, can be [illegible]

Cr. R., 37, referred to. Tarini Charn Mundle *v.* Gourikant Biswas (1902) . 7 C. W. N., 25

5.—*Criminal Procedure Code (Act V of 1898), ss. 107, 118—Security for keeping the peace, order requiring, when proper—Record of order.*—An order under s. 118, Code of Criminal Procedure, requiring security for keeping the peace, should show that the person so called upon is likely to commit a breach of the peace or disturb the public tranquillity or to do some wrongful act that may probably occasion [illegible] tranqui[illegible] Crimin[illegible] bound [illegible] of stop[illegible] washerman and others from being rendered to complainant, and also, generally, that they had committed "diverse other acts of oppression:" *Held* that the former statement was not enough to justify an order under s. 118, Code of Criminal Procedure, and the latter was by itself too vague to sustain the order. Jinuat Chowdry *v.* Rhusen (1902)

[7 C. W. N., 32

6.—*Criminal Procedure Code (Act V of 1898),* [illegible]

has been committed—*Quære.* Kannookaran Kunhamad *v.* Emperor (1902)

I. L. R., 26 Mad., 469

RECOGNIZANCE TO KEEP PEACE—*concluded.*

3. LIKELIHOOD OF BREACH OF PEACE.

7.—*Criminal Procedure Code (Act V of 1898), ss. 107, 145—Dispute relating to possession—Propriety of instituting proceedings for taking security—Findings justifying order for security—Issue raised, as in a case under s 145—Order* [illegible]

Per BANERJEE, J.—The mere fact of a dispute likely to lead to a breach of the peace being a dispute relating to the possession of land may not be sufficient to preclude the Magistrate from taking [illegible]

relates to possession of land. KING-EMPEROR *v.* BASIRUDDIN MOLLAH (1903) . 7 C. W. N., 746

4. CANCELLING ORDER.

8.—*Order for keeping the peace on conviction—Appeal—Appellate Court, power of, to set aside such order—Criminal Procedure Code (Act V of 1898), ss 106 and 423, cl. (d)*—An order in appeal, setting aside an order of the first Court made under [illegible]

RECORD.

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, DIARIES, PAPERS AND REPORTS . I. L. R., 28 Calc., 348

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS . . . 6 C. W. N., 923

——disallowance of cost of printing—

See PRIVY COUNCIL, PRACTICE OF—COSTS. [L. R., 29 I. A., 156

——of statement made by dying person—

See EVIDENCE—CRIMINAL CASES—DYING DECLARATION . 6 C. W. N., 72

See INFORMATION OF COMMISSION OF OFFENCE . . 6 C. W. N., 921

——under s. 145, Criminal Procedure Code—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE . 6 C. W. N., 923

RECORD-OF-RIGHTS.

See BENGAL TENANCY ACT—

ss. 101 TO 111A ;
[I. L. R., 28 Calc., 28

ss. 101 TO 108 ;
[I. L. R., 30 Calc., 339

s. 188 . . 7 C. W. N., 400

See RENT, SUIT FOR . 6 C. W. N., 914

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS . 5 C. W. N., 798

REDEMPTION.

See EQUITY OF REDEMPTION.

See LIMITATION ACT, 1877, SCH. II—

ART. 144—ADVERSE POSSESSION ;
[I. L. R., 27 Bom., 43

ART. 148
I. L. R., 26 Bom., 500

See MALABAR LAW—MORTGAGE.
[I. L. R., 26 Mad., 649

See MORTGAGE—

CONSTRUCTION ;
[I. L. R., 26 Bom., 252

POSSESSION UNDER MORTGAGE;
[I. L. R., 25 All., 287

REDEMPTION ;

ACCOUNTS
[I. L. R., 26 Bom., 363

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.
[5 C. W. N., 423

See REGISTRATION ACT (III OF 1877), s. 17, CLS. (b) AND (h).
[I. L. R., 30 Calc., 1016

See RES JUDICATA—MATTERS IN ISSUE.
[I. L. R., 25 Bom., 115

REFERENCE TO FULL BENCH.

—*Power of Judge of High Court presiding at the Criminal Sessions to refer to Full Bench point raised by accused before he is called upon to plead—Letters Patent, High Courts, 1865, cl. 25*—Where a point is raised on behalf of the accused before he is called upon to plead, the Judge presiding at the Sessions has no power, under the Charter, to refer the matter to a Full Bench. QUEEN-EMPRESS *v.* DOLEGOBIND DASS (1900) . I. L. R., 28 Calc., 211 ;
[s.c., 5 C. W. N., 169

REFERENCE TO HIGH COURT—CIVIL CASES.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

RECOGNIZANCE TO KEEP PEACE.

See Evidence—Criminal Cases—Character . I. L. R., 25 All., 273

See Magistrate—Powers of Magistrates . I. L. R., 29 Calc., 389

See Possession, Order of Criminal Court as to—Likelihood of Breach of the Peace . 6 C. W. N., 883 [7 C. W. N., 29 I. L. R., 30 Calc., 443

See Nuisance—Under Criminal Procedure Code . 7 C. W. N., 142

See Transfer of Criminal Case—General Cases . I. L. R., 24 All., 151

1. MAGISTRATE WITH POWERS OF APPELLATE COURT.

1.—*Order—Omission of express finding as to commission of offence within the section—Illegality—Jurisdiction—Criminal Procedure Code (Act V of 1898), ss 106 and 423—Penal Code (Act XLV of 1860), s 379.*—Where a Subordinate Magistrate convicted the prisoner, under s 379 of the Penal Code, of theft, and the District Magistrate on appeal merely affirmed the conviction and added to his judgment an order under s. 106 of the Criminal Procedure Code binding over the petitioner to keep the peace: *Held* that he was not competent to pass such an order, except on an express finding that the petitioner had committed an offence within the terms of s. 106. Kinoo Sheikh *v.* Darastullah Mollah (1902) [I. L. R., 29 Calc., 393; s.c., 6 C. W. N., 678

2. WHEN RECOGNIZANCE MAY BE TAKEN.

2.—*Criminal Procedure Code, s. 106—Binding* [illegible] S. 106 of the [illegible]

[illegible] so far. Srihari Shome *v.* Lal Khan (1900) [5 C. W. N., 250

3.—*Security for keeping the peace on conviction, order for—Offences not within the terms of s. 106 of the Code of Criminal Procedure* [illegible]

RECOGNIZANCE TO KEEP PEACE—*continued.*

2. WHEN RECOGNIZANCE MAY BE TAKEN—*continued.*

Criminal Procedure Code, it is incumbent upon the Magistrate to record a clear finding with respect to the facts which in his opinion make the provisions of that section applicable. *Jib Lal Gir* v. *Jogmohan Gir (1899), I. L. R., 26 Calc., 576,* followed. Baidya Nath Majumdar *v.* Nibaran Chunder Gope (1902) . . I. L. R., 30 Calc., 93; [s.c., 6 C. W. N., 471

4.—*Criminal Procedure Code (Act V of 1898), s. 106, order under, when proper—House-trespass—Breach of peace—Penal Code, s. 448*—An order under s. 106, Code of Criminal Procedure, can be [illegible] guished. *Queen* v. *Gendoo Khan (1867), 7 W. R., Cr. R., 14,* and *Queen* v. *Jhapoo (1873), 20 W. R., Cr. R., 37,* referred to Tarini Charn Mundle *v.* Gourikant Biswas (1902) . 7 C. W. N., 25

5.—*Criminal Procedure Code (Act V of 1898), ss. 107, 118—Security for keeping the peace,* [illegible] Criminal Procedure Code, stated that the persons bound over had used their influence for the purpose of stopping the services of the village barber, washerman and others from being rendered to complainant, and also, generally, that they had committed "diverse other acts of oppression:" *Held* that the former statement was not enough to justify an order under s. 118, Code of Criminal Procedure, and the latter was by itself too vague to sustain the order. Jinuat Chowdry *v.* Rhusen (1902) [7 C. W. N., 32

[illegible] *Procedure Code (Act V of 1898),* [illegible] committed by them [illegible] order requiring them to give security for keeping the peace must be set aside, as none of the offences for which they had been convicted necessarily involved a breach of the peace. Whether such an order might be made in a case in which a person is not accused of an offence involving a breach of the peace, but there is nevertheless an express finding that a breach has been committed—*Quære.* Kannookaran Kunhamad *v.* Emperor (1902) I. L. R., 26 Mad., 469

RECOGNIZANCE TO KEEP PEACE—*concluded.*

3. LIKELIHOOD OF BREACH OF PEACE

7.—*Criminal Procedure Code (Act V of 1898), ss. 107, 145—Dispute relating to possession—Propriety of instituting proceedings for taking security—Findings justifying order for security* ...

sion" of *S* and *B* in certain lands in dispute, and upon that finding made an order for taking security from *M* *Held* that the finding was not such as would justify the order, and it should be set aside. *Per* BANERJEE, *J.*—The mere fact of a dispute likely to lead to a breach of the peace being a dispute relating to the possession of land may not be sufficient to preclude the Magistrate from taking proceedings under s 107, Criminal Procedure Code. *Per* BRETT, *J*—It cannot be held as a general rule that by the provisions of the Criminal Procedure Code a Magistrate is deprived of jurisdiction under s. 107, Criminal Procedure Code, in a case in which the dispute likely to cause a breach of the peace relates to possession of land KING-EMPEROR v. BASIRUDDIN MOLLAH (1903) . 7 C. W. N., 742

4. CANCELLING ORDER.

8.—*Order for keeping the peace on conviction—Appeal—Appellate Court, power of, to set aside such order—Criminal Procedure Code (Act V of 1898), ss. 106 and 423, cl (d)*—An order ... setting aside an order of the first Court passed under s. 106 of the Code of Criminal Procedure, ...

RECORD.

See EVIDENCE—CRIMINAL CASES ... EVIDENCE, DIARIES, PAPERS ... REPORTS . I. L. R., 28 Calc., ...

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS . . . 6 C. W. N., ...

——disallowance of cost of printing—

See PRIVY COUNCIL, PRACTICE OF—...

[L. R., 30 I. A., ...

——of statement made by dying person—

See EVIDENCE—CRIMINAL CASES—DYING DECLARATION . 6 C. W. N., ...

See INFORMATION OF COMMISSION OF OFFENCE . . 6 C. W. N., ...

——under s. 145, Criminal Procedure Code—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE . 6 C. W. N., ...

... (VIII ...

... f the High ... e legality ... nce or of ... other than ... *Courtney* ... o. The law ... or one to ... *mitted under* ... should, in ... a term of ... h be may ... a reformatory ... prescribes ... ful offender ... sentence of ... *been passed*, ... r v GOKULA ... W. N., 210

... *chool—Detention ... mprisonment—* ... *set aside such* ... ry Schools Act ... e jurisdiction of ... le the sentence, ... for detention is ... t remains intact, ... y of any sentence ... FASUT v. COURT- ... 28 Calc., 423; ... 5 C. W. N., 211

... D 16;

... 3 AND 16.

... c;

... 6;

... TER.

... CE—GENERAL CASES. [5 C. W. N., 44

... ON ACT (III OF 1877)—

... 77;

[I. L. R., 24 All., 402

I. L. R., 30 Calc., 532

... OCUMENTS.

... ION ACT (III OF 1877)

5 C. W. N., 177

REFERENCE TO HIGH COURT—CIVIL CASES—*concluded.*

See STAMP ACT (II OF 1899)—

ss. 32 AND 57;
[I. L. R., 25 Mad., 751

ss. 57 . I. L. R., 25 Mad., 752

1.—**Refusal to interfere**—*Practice—Pro-* [illegible]

the opponent, appeared before the District Judge, claiming to be the owner of the village in which the lands were situate, and contended that the lands did not belong to the mosque and that the applicant was not the manager. The District Judge felt a doubt as to whether he had jurisdiction to entertain the application unless a suit was properly framed and filed under s. 539 *of the Civil Procedure Code (Act XIV of 1882)*, and referred the point to the High Court under s. 617 of the Code. The High Court refused to answer the reference, being of opinion that no reference under s. 617 could be made on such an application. Ss. 617 and 647 of the Civil Procedure Code apply when doubts arise in the proceeding of a suit or appeal or execution or other proceeding. S. 617 was not intended to provide for suppositious cases which do not naturally arise in a proper proceeding before the Court. MAHAMAD HAJI ZAKERIA *v.* AHMADBHAI HABIBBHAI (1900) . . I. L. R., 25 Bom., 327

2.—————— *Civil Procedure Code, s. 646B—Small Cause Court—Jurisdiction—Question of jurisdiction not raised in the Court of Small Causes—Reference by District Judge under s. 646B declined.*—S. 646B of the Code of Civil Procedure does not apply to every case in which a Court of Small Causes has failed to exercise a jurisdiction vested in it by law, or has [illegible] by law, but [illegible] of such cases, [illegible] Small Causes [illegible] or not to be, [illegible] on as to the [illegible] either party, and the Court of Small Causes proceeded to judgment as if the case was properly cognizable by it, the High Court refused to interfere upon a reference by the District Judge purporting to be made under s. 646B of the Code of Civil Procedure. RAM LAL *v.* KABUL SINGH (1902)
[I. L. R., 25 All., 135

REFERENCE TO HIGH COURT—CRIMINAL CASES.

See CALCUTTA MUNICIPAL ACT, 1899, s. 449 . . . 7 C. W. N., 554

See HABEAS CORPUS, WRIT OF.
[I. L. R., 29 Calc., 286

REFERENCE TO HIGH COURT—CRIMINAL CASES—*continued.*

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION . 5 C. W. N., 71

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.
[I. L. R., 29 Calc., 128

1.—**Acquittal**—*Practice—Reference to High Court from verdict of acquittal, when not proper—Making up of records, defect in—Penal Code (Act XLV of 1860), ss. 116, 161, 466.*—Where, on the Sessions Judge's own showing in his charge to the jury, the evidence for the prosecution was so open to hostile criticism as to justify the jury in regarding it with suspicion: *Held* that the Sessions Judge was not justified in making a reference, under s. 307, Code of Criminal Procedure, against a verdict of acquittal delivered upon such evidence. KING-EMPEROR *v.* CHIDOHAN GOSSAIN (1902) . . . . . 7 C. W. N., 135

2.—————— *Criminal Procedure Code, ss. 435, 438, 439—Practice—Revision—Reference by District Magistrate recommending the reconsideration of an order of acquittal passed by a Subordinate Magistrate.*—In the case of an acquittal by a Subordinate Magistrate, where the Local Government does not appeal, or where the District Magistrate does not move the Local Government to appeal, the High Court will not, as a general rule, entertain a reference direct from the District Magistrate under s. 438 of the Code of Criminal Procedure. IN THE MATTER OF AMIN-UD-DIN (1902)
[I. L. R., 24 All., 346

3.—————— *Criminal Procedure Code, s. 438—Revision—Practice—Reference by District Magistrate questioning an order of acquittal.*—The High Court will not ordinarily entertain a reference under s. 438 of the Code of Criminal Procedure, the object of which is to have an order of acquittal passed by an inferior Court set aside. EMPEROR *v.* MADAR BAKHSH (1902)
[I. L. R., 25 All., 128

4.—**Duty of Sessions Judge**—*Reference under s. 307, Criminal Procedure Code—Duty of the Sessions Judge in making a reference.*—Where a Sessions Judge, in his reference to the High [illegible] description it is the duty of the Sessions Judge to set out on what portions of the evidence or on what facts disclosed by the evidence the accused should have been convicted. KING-EMPEROR *v.* BHUT NATH GHOSE (1902) . 7 C. W. N., 345

5.—**Security for good behaviour**—*Criminal Procedure Code, s. 118—Security for good behaviour—Discretion of Court—Security demanded not to be excessive.*—Where a Magistrate, acting under s. 118 of the Code of Criminal Procedure, required securities to an

REFERENCE TO HIGH COURT—CRIMINAL CASES—*concluded.*

amount which the person to be bound over was totally unable to furnish, in consequence of which he remained in jail for some two months and a half, the Court *held* that the Magistrate had not exercised a proper discretion in the matter, and reduced the amount of the security. *Queen-Empress* v. *Rama (1892), I L R, 16 Bom, 372,* followed. QUEEN-EMPRESS v RAZA ALI (1900)

[I. L. R., 23 All., 80

REFORMATORY SCHOOLS ACT (VIII OF 1897).

——ss. 8, 9, 11, 13 and 16—

—*Youthful offenders—Periods of detention allowable under the Act—Finding by Magistrate as to age—Form of order—Exact period of*

[illegible]

five years, unless he should attain the age of eighteen years at an earlier date *Held* that the order was wrong, inasmuch as it failed to fix the exact period of detention. *Semble* that in some cases it may not be necessary to ascertain the exact age of the offender. If he be not over fifteen, a period of three years may rightly be fixed; if not over eleven, a period of seven years may be fixed without further inquiry. But, in cases in which inquiry is necessary in order to fix the period, as when the

[illegible]

question to the reformatory officials The effect of the notification published by Government, regulating the periods for which youthful offenders may be sent to reformatory schools in the Madras Presidency, is to fix a minimum period of five years for all cases in which such a period is legally possible; namely, in all cases where the offender is not over thirteen at the date of conviction. It was not intended to prevent the Magistrate from fixing a period short of five years, but not short of three years, in the case of a boy over thirteen. QUEEN-EMPRESS v RAMA (1900)

[I. L. R., 24 Mad., 13

——ss. 8, 9 and 16—

Penal Code (Act XLV of 1860), s. 379—Theft—Code of Criminal Procedure (Act V of 1898), s. 439—High Court, power of revision of—Order for detention of youthful offender in reformatory school without passing sentence, legality of—Jurisdiction of High Court to consider legality or propriety of conviction, sentence or order, if affected by s. 16, Reformatory Schools Act—Limitation of power— S 16 of the Reformatory Schools Act (VIII of

REFORMATORY SCHOOLS ACT (VIII OF 1897)—*concluded.*

—— ss. 8, 9 and 16—*concluded.*

1897) does not affect the jurisdiction of the High Court, as a Court of revision, to consider the legality or propriety of the conviction or sentence or of any order passed by a Subordinate Court other than

[illegible]

the first instance, sentence the accused to a term of imprisonment or transportation, which he may then commute into one of detention in a reformatory school for such period as the law prescribes. An order for the detention of a youthful offender in a reformatory school, when no sentence of imprisonment or of transportation has been passed, is bad in law. RADHA KRISTO BARAT v GOKULA NUT (1901) . . . . 5 C. W. N., 210

——ss. 8 and 16—

—*Jurisdiction—Reformatory school—Detention in, in lieu of sentence of imprisonment—Power of High Court to alter or set aside such sentence*—S 16 of the Reformatory Schools Act does not in any way take away the jurisdiction of the High Court to alter or set aside the sentence, in substitution of which an order for detention is made. The power of the High Court remains intact, to consider the propriety or legality of any sentence passed upon a youthful offender. REASUT v COURTNEY (1900) . . I. L. R., 28 Calc., 423;

[s.c., 5 C. W. N., 211

——s. 9—

See ante—

ss. 8, 9, 11, 13 AND 16;

ss. 8, 9 AND 16.

——ss. 11 and 13—

See ante, ss. 8, 9, 11, 13 AND 16.

——s. 16—

See ante—

ss. 8, 9, 11, ETC;

ss. 8, 9 AND 16;

ss 8 AND 16.

REFUSAL TO REGISTER.

See FALSE EVIDENCE—GENERAL CASES.

[5 C. W. N., 44

See REGISTRATION ACT (III OF 1877)—

ss. 73 TO 77;

[I. L. R., 24 All., 402

s. 77 . I. L. R., 30 Calc., 533

REGISTRAR OF DOCUMENTS.

See REGISTRATION ACT (III OF 1877).

ss. 32, 34 AND 87; 5 C. W. N., 177

REFERENCE TO HIGH COURT—CIVIL CASES—*concluded.*

See STAMP ACT (II OF 1899)—

ss. 32 AND 57; [I. L. R., 25 Mad., 751

ss 57 . I. L. R., 25 Mad., 752

1.—Refusal to interfere—*Practice—Procedure—Civil Procedure Code (Act XIV of 1882), ss. 539 617, 647.*—*M*, claiming to be a trustee or manager of a mosque, applied to the District Judge for permission to grant a lease of lands belonging to the mosque. In response to a proclamation issued, *A*, the opponent, appeared before the District Judge, claiming to be the owner of the village in which the lands were situate, and contended that the lands did not belong to the mosque and that the applicant was not the manager. The District Judge felt a doubt as to whether he had jurisdiction to entertain the application unless a suit was properly framed and filed under s. 539 of the Civil Procedure Code (Act XIV of 1882), and referred the point to the High Court under s. 617 of the Code. The High Court refused to answer the reference, being of opinion that no reference under s. 617 could be made on such an application. Ss. 617 and 647 of the Civil Procedure Code apply when doubts arise in the proceeding of a suit or appeal or execution or other proceeding. S. 617 was not intended to provide for suppositious cases which do not naturally arise in a proper proceeding before the Court. MAHAMAD HAJI ZAKERIA *v.* AHMADBHAI HABIBBHAI (1900) . . I. L. R., 25 Bom., 327

2.——— *Civil Procedure Code, s. 646B—Small Cause Court—Jurisdiction—Question of jurisdiction not raised in the Court of Small Causes—Reference by District Judge under s. 646B declined.*—S. 646B of the Code of Civil Procedure does not apply to every case in which a Court of Small Causes has failed [illegible] law, or has [illegible] by law, but [illegible] of such cases, [illegible] Small Causes [illegible] or not to be, [illegible] on as to the [illegible] either party, and the Court of Small Causes proceeded to judgment as if the case was properly cognizable by it, the High Court refused to interfere upon a reference by the District Judge purporting to be made under s. 646B of the Code of Civil Procedure. RAM LAL *v.* KABUL SINGH (1902) [I. L. R., 25 All., 135

REFERENCE TO HIGH COURT—CRIMINAL CASES.

See CALCUTTA MUNICIPAL ACT, 1899, s. 449 . . . 7 C. W. N., 554

See HABEAS CORPUS, WRIT OF. [I. L. R., 29 Calc., 286

REFERENCE TO HIGH COURT—CRIMINAL CASES—*continued.*

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION . 5 C. W. N., 71

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS. [I. L. R., 29 Calc., 128

1.—Acquittal—*Practice—Reference to High Court from verdict of acquittal, when not proper—Making up of records, defect in—Penal Code (Act XLV of 1860), ss. 116, 161, 466.*—Where, on the Sessions Judge's own showing in his charge to the jury, the evidence for the prosecution was so open to hostile criticism as to justify the jury in regarding it with suspicion: *Held* that the Sessions Judge was not justified in making a reference, under s. 307, Code of Criminal Procedure, against a verdict of acquittal delivered upon such evidence. KING-EMPEROR *v.* CHIDGHAN GOSSAIN (1902) . . . . . 7 C. W. N., 135

2.——— *Criminal Procedure Code, ss. 435, 438, 439—Practice—Revision—Reference by District Magistrate recommending the reconsideration of an order of acquittal passed by a Subordinate Magistrate.*—In the case of an acquittal by a Subordinate Magistrate, where the Local Government does not appeal, or where the District Magistrate does not move the Local Government to appeal, the High Court will not, as a general rule, entertain a reference direct from the District Magistrate under s. 438 of the Code of Criminal Procedure. IN THE MATTER OF AMIN-UD-DIN (1902) [I. L. R., 24 All., 346

3.——— *Criminal Procedure Code, s. 438—Revision—Practice—Reference by District Magistrate questioning an order of acquittal.*—The High Court will not ordinarily entertain a reference under s. 438 of the Code of Criminal Procedure, the object of which is to have an order of acquittal passed by an inferior Court set aside EMPEROR *v.* MADAR BAKHSH (1902) [I. L. R., 25 All., 128

4.—Duty of Sessions Judge—*Reference under s. 307, Criminal Procedure Code—Duty of the Sessions Judge in making a reference.*—Where a Sessions Judge, in his reference to the High [illegible] description it is the duty of the Sessions Judge to set out on what portions of the evidence or on what facts disclosed by the evidence the accused should have been convicted. KING-EMPEROR *v.* BHUT NATH GHOSE (1902) . 7 C. W. N., 345

5.—Security for good behaviour—*Criminal Procedure Code, s. 118—Security for good behaviour—Discretion of Court—Security demanded not to be excessive.*—Where a Magistrate, acting under s. 118 of the Code of Criminal Procedure, required securities to an

REFERENCE TO HIGH COURT—CRIMINAL CASES—*concluded.*

amount which the person to be bound over was totally unable to furnish, in consequence of which he remained in jail for some two months and a half, the Court *held* that the Magistrate had not exercised a proper discretion in the matter, and reduced the amount of the security. *Queen-Empress* v *Rama (1892), I L R, 16 Bom, 372,* followed. QUEEN-EMPRESS v RAZA ALI (1900)

[I. L. R., 23 All., 80

REFORMATORY SCHOOLS ACT (VIII OF 1897).

——ss. 8, 9, 11, 13 and 16—

—*Youthful offenders—Periods of detention allowable under the Act—Finding by Magistrate as to age—Form of order—Exact period of detention.*—A District Magistrate before whom the case of a youthful offender came, under the provisions of s. 9 of the Reformatory Schools Act, 1897, found [illegible]

[illegible] five years, unless he should attain the age of eighteen years at an earlier date *Held* that the order was wrong, inasmuch as it failed to fix the exact period of detention. *Semble* that in some cases it may not be necessary to ascertain the exact age of the offender. If he be not over fifteen, a period of three years may rightly be fixed; if not over eleven, a period of seven years may be fixed without further inquiry But, in cases in which inquiry is necessary in order to fix the period, as when the [illegible]

[illegible] question to the reformatory officials The effect of the notification published by Government, regulating the periods for which youthful offenders may be sent to reformatory schools in the Madras Presidency, is to fix a minimum period of five years for all cases in which such a period is legally possible; namely, in all cases where the offender is not over thirteen at the date of conviction. It was not intended to prevent the Magistrate from fixing a period short of five years, but not short of three years, in the case of a boy over thirteen. QUEEN-EMPRESS v RAMA (1900)

[I. L. R., 24 Mad., 13

——ss. 8, 9 and 16—

Penal Code (Act XLV of 1860), s. 379—Theft—Code of Criminal Procedure (Act V of 1898), s. 439—High Court, power of revision of—Order for detention of youthful offender in reformatory school without passing sentence, legality of—Jurisdiction of High Court to consider legality or propriety of conviction, sentence or order, if affected by s. 16, Reformatory Schools Act—Limitation of power.—S. 16 of the Reformatory Schools Act (VIII of

REFORMATORY SCHOOLS ACT (VIII OF 1897)—*concluded.*

——ss. 8, 9 and 16—*concluded.*

[illegible]

tory school for such period as the law prescribes. An order for the detention of a youthful offender in a reformatory school, when no sentence of imprisonment or of transportation has been passed, is bad in law. RADHA KRISTO BARAT v GOKULA NUT (1901) . . . . 5 C. W. N., 210

——ss. 8 and 16—

—*Jurisdiction—Reformatory school—Detention in, in lieu of sentence of imprisonment—Power of High Court to alter or set aside such sentence.*—S 16 of the Reformatory Schools Act does not in any way take away the jurisdiction of the High Court to alter or set aside the sentence, in substitution of which an order for detention is [illegible]

——s. 9—

See ante—

ss. 8, 9, 11, 13 AND 16;

ss. 8, 9 AND 16.

——ss. 11 and 13—

See ante, ss. 8, 9, 11, 13 AND 16.

——s. 16—

See ante—

ss. 8, 9, 11, ETC;

ss 8, 9 AND 16;

ss 8 AND 16.

REFUSAL TO REGISTER.

See FALSE EVIDENCE—GENERAL CASES. [5 C. W. N., 44

See REGISTRATION ACT (III OF 1877)—

ss. 73 TO 77; [I. L. R., 24 All., 402

s. 77 . I. L. R., 30 Calc., 532

REGISTRAR OF DOCUMENTS.

See REGISTRATION ACT (III OF 1877). ss. 32, 34 AND 87; 5 C. W. N., 177

REGISTRAR OF HIGH COURT.

——reference to—

See DIVORCE ACT, s. 36 . 6 C. W. N., 414

——report of—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTIONS OF LAW—REGISTRAR'S REPORT.

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR.

——sale by—

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

— Sale by Registrar—*Dwelling-house—Conditions of sale—Title, abstract of, mis-statement in—Acceptance of title by purchaser—Payment into Court of balance—Subsequent discovery of misstatement—Sale, rescission of—Compensation.*—A purchaser of a dwelling-house at a Registrar's sale accepted the conditions of sale, whereby he was required to furnish requisitions and objections, if any, within a fortnight after delivery of the abstract (and in this respect time was of the essence of the contract), and he was not entitled to call for any other documents except those abstracted, or for the originals of

title as shown in the abstract, and paid the balance of the purchase-money into Court, without reserving any right to object to the title. He now applied to be discharged from such purchase, and for leave to withdraw the purchase-money from Court, on the ground that he had subsequently discovered that only an eight-twelfth share of the house had been sold to him, and that he had been misled in the purchase by misrepresentation contained in the conditions of sale and the abstract of title. *Held* that, although there was no fraud on the part of the

enforce the contract or rescind the sale. It is different in the case of land, occupied for agricultural or such like purposes, where there is a deficiency in area. *Ordered* that it be referred to the Registrar to inquire and report whether a title can be made to the property by the vendor. Further hearing adjourned until the return of the report. UPENDRA NATH MITTER *v.* OBHOY KALI DASSI (1901)
[5 C. W. N., 593

REGISTRAR OF SMALL CAUSE COURT.

See SANCTION FOR PROSECUTION—
POWER TO GRANT SANCTION;
[I. L. R., 27 Bom., 130
REVOCATION OF SANCTION.
[I. L. R., 27 Bom., 130

REGISTRATION.

See DEED—EXECUTION.
[6 C. W. N., 329

——effect of—

See PRINCIPAL AND AGENT—REVOCATION.
[I. L. R., 30 Calc., 265

See REGISTRATION ACT, 1877—
SS. 49 AND 50;
S. 50;
S. 50 AND S. 17.

——non-validity of unregistered lease—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[7 C. W. N., 90

——of land—

See LAND REGISTRATION ACT, 1876 (BEN. ACT VII OF 1876).

—— suit to enforce—

See REGISTRATION ACT (III OF 1877), s. 77 . . I. L. R., 30 Calc., 532

—— whether it amounts to notice—

See TRANSFER OF PROPERTY ACT, s. 3—"NOTICE" . . 7 C. W. N., 11

— *Notice of prior incumbrance—Transfer of Property Act (IV of 1882), s. 81—Marshalling of securities*—Registration of a sale or mortgage is in itself notice to subsequent purchasers or mortgagees. This doctrine is as applicable since the introduction of the Transfer of Property Act (IV of 1882) as it was before. DINA *v.* NATHU (1902)
[I. L. R., 26 Bom., 538

REGISTRATION ACT (III OF 1877).

—— s. 3—

See post, s. 28 . I. L. R., 25 Bom., 50

—— s. 17—

See post, s. 28 . I. L. R., 29 Calc., 654

See post, ss. 50 AND 17.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . L. R., 29 I. A., 138

See INSOLVENT ACT (11 & 12 VICT., c. 21), s. 23 . I. L. R., 25 Bom., 659

See LANDLORD AND TENANT—TRANSFER BY TENANT . . 6 C. W. N., 916

1.—*Withdrawal petition setting out terms of compromise filed in Court but not registered—Subsequent suit for land referred to in the compromise—Necessity for registration.*—In 1893, plain-

immov-
a com-
were to
sued for.

REGISTRATION ACT (III OF 1877)—*continued.*

——s. 17—*continued.*

They then filed a petition in Court, setting out the agreement at which they had arrived, and asking that the suit might be withdrawn. The Court thereupon ordered the suit to be struck off the file, and made an order as to costs The agreement was never registered. Plaintiff, relying on the agreement ... to have ... established and to recover

2.—*Deed of gift of immovable property— ... legal representative after death of*
...ary registra-
...sentative of
...ntary regis-
...his lifetime
... Mad., 672

... I. L. R., 30 Calc., 483
(1903).

4.—Cls. (b) and (h)—*Partnership—Deed of partnership—Clause giving one partner only a ... of redemption of mortgaged property—Docu-*
...ed a
...was
...rs a
...eriod
...t in
...stra-
...ation
tion under clause (b) of s ... admissible in evidence

5.—Cl. (d)—*Transfer of Property Act (IV of 1882), ss. 107, 117—Lease for agricultural purposes—Lease reserving annual rent—Term exceeding five years*—Defendants executed an instrument by which they leased a *betel* garden from plaintiff for

REGISTRATION ACT (III OF 1877)—*continued*

——s. 17—*concluded.*

an indefinite period at an annual rent of ... The instrument was not registered. Rent having fallen into arrears, plaintiff sued to recover the same, ...

Act, and (2) that, assuming it to be an agricultural lease, its registration was compulsory under s. 17, cl. (d), of the Indian Registration Act, inasmuch as it was not a lease for a term not exceeding five years On a petition being filed to revise the Munsif's decree: *Held* (1) that a lease of land for the cultivation of *betel* is an agricultural lease. *Kunhayen Haji* v. *Mayan, I. L. R., 17 Mad.,* 98, not followed, (2) that, although the lease might ... of neither
... was not a
... either party
... ion of that
... I. L. R., 4
... annual rent
... itional, and
plaintiff was not precluded from proving the letting by oral evidence or by proof of the unregistered instrument. MURUGESA CHETTI *v.* CHINNATHAMBI GOUNDAN (1901) . . I. L. R., 24 Mad., 421

—— s. 18—

See post, s 28 . I. L. R., 20 Calc., 654

—— s. 28—

1.—*Registration Act (III of 1877), ss. 8, 28, 64 and 65—Registration—Registration of a docu-*

2.—*Registration—Mortgage—Registration Act (III of 1877), ss. 17, 18, 28, 49—Registration of documents—Jurisdiction to register documents—*

mortgage bond, the defendant contended, *inter alia,* that no such property as described in the deed ever existed; and, no satisfactory evidence having been given as to its existence: *Held* that the document

REGISTRATION ACT (III OF 1877)—*continued.*

—— s. 28—*concluded.*

could not take effect as a mortgage-bond; but, it being registered, the plaintiff's claim was not barred, though the suit was brought more than three years after the date of execution of the deed; and the plaintiff was entitled to a money-decree for the whole amount secured by the deed, with interest at the contract rate. *Baij Nath Tewari* v. *Sheo Sahoy Bhagut (1891), I. L. R., 18 Calc., 556,* and *Beni Madhab Mitter* v. *Khatir Mondul (1887), I. L. R., 14 Calc., 449,* relied upon. *Ram Coomar Sen* v. *Khoda Newaz (1880), 7 C. L. R., 223,* commented upon. JOGINEE MOHUN CHATTERJEE *v.* BHOOT NATH GHOSAL (1902) . I. L. R., 29 Calc., 654; [s.c., 6 C. W. N., 856

——ss. 32, 34 and 87—

— *Registration after death of executant—Registrar, jurisdiction of—Procedure, defect in*—A Registrar has no power or jurisdiction to register a deed unless he is moved by some person entitled to [illegible]

RAHIM (1900) . . . . . 5 C. W. N., 177; [s.c., L. R., 28 I. A., 15; I. L. R., 23 All., 233

——s. 49—

See ante, s. 28 . I. L. R., 29 Calc., 654

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 27 Bom., 515

——ss. 49 and 50—

— *Registration—Priority—Unregistered deed accompanied with possession—Subsequent sale by registered deed—Effect of possession—Possession, for purposes of notice, equivalent to registration—Duty of purchaser to inquire as to nature of possession*—On the 16th June, 1876, Revapuri mortgaged the lands in suit to the first defendant, with possession, and the latter, on the 26th June, 1876, leased them to the second defendant for one year. The second defendant remained in possession as tenant after the year had expired. On the 3rd December, [illegible]

heir of Revapuri sold the equity of redemption in the mortgage of 1876, by a registered deed, to the plaintiff. At the date of this sale to the plaintiff the second defendant was still in actual possession. The [illegible] rts passed a decree for the plaintiff, holding that his registered deed gave him priority over the second

REGISTRATION ACT (III OF 1877)—*continued.*

—— ss. 49 and 50—*concluded.*

defendant, whose deed was unregistered. On appeal: *Held* (reversing the decree of the lower Courts) that the plaintiff's suit should be dismissed. Possession, in certain cases, for the purposes of notice, has the same effect as registration. The plaintiff, at the date of his purchase, had notice of the possession of the second defendant, and, that being so, it was the plaintiff's duty to inquire of the second defendant under what title he held; and, if the plaintiff had done so, instead of assuming that the second defendant was still holding merely as tenant, he would have discovered that the second defendant had purchased the land. KONDIBA BIN BABAJI *v.* NANA SHIDRAO (1903) . . . I. L. R., 27 Bom., 408

—— s. 50—

See ante, ss. 49 AND 50.

1.—*Priority—Registered and unregistered documents—Purchaser under a registered deed, whether entitled to priority over purchaser in execution of a subsequent decree obtained by a prior mortgagee under an unregistered deed.*—A purchaser of immovable property under a registered deed of sale is entitled to priority over a purchaser of the same property in execution of a subsequent decree obtained by a mortgagee under a prior unregistered deed. *Baijnath* v. *Lachman Das (1885), I. L. R., 7 All., 888,* dissented from. ISHAN CHANDRA DEY *v.* GONESH CHANDRA PARSI (1900) [I. L. R., 28 Calc., 139; s.c., 5 C. W. N., 419

2.—*Document of which registration is optional—Priority of subsequent registered document over prior unregistered document—Notice of prior document—Onus of alleging and proving notice.*—[illegible] not given by the Courts [illegible] Act [illegible] age, [illegible] had [illegible] the party alleging such knowledge or notice to aver it in his pleadings and to prove it. CHINNAPPA REDDI *v.* MANICKAVASAGAM CHETTI (1901) [I. L. R., 25 Mad., 1

3.—*Conflict between registered and unregistered documents—Long possession by usufructuary mortgagee under an unregistered instrument—Title.*—Defendant and his father had taken possession of certain land as usufructuary mortgagees in 1877, and had held possession of it ever since. The document witnessing the mortgage was never registered. The land was subsequently purchased by them. At a date later than the purchase, plaintiff obtained a mortgage over the land, which was duly registered. Plaintiff now sued to recover possession of the land: *Held* that he was not entitled to recover. Defendant had been in possession as usufructuary mortgagee though under an unregistered document, since 1877; and s. 50 of the Registration Act does not affect the operation of the law of limitation in favour of a person who claims under an unregistered document. *Nallamuttu Pillai* v. *Betha Naickan*,

REGISTRATION ACT (III OF 1877)—*continued*

—— s. 50—*concluded.*

I. L. R., 23 Mad., 37, referred to BUDANKAYALA BALAKRISHNAMMA SUBUDHI *v.* VINAYAKA RAYA SINGI BISOYI (1902) . I. L. R., 26 Mad., 72

4.—*Prior and subsequent incumbrancers—Notice—Prior incumbrance not compulsorily registrable, but incumbrancer in possession.—Held* that, if a person about to take a mortgage which must be made by registered deed, finds some person other than the intending mortgagor in possession, the fact of such possession is sufficient to put the would-be mortgagee on inquiry as to the title of such person, and, if such person's title is that of a prior mortgagee under a document not compulsorily registrable, the second

[I. L. R., 25 All., 366

——s. 50 and s. 17—

—*Registration—Constructive notice—Possession.*—A registered document contained a recital of unregistered incumbrances, and, a question having

cover unregistered documents under which the holders of registered documents derive title. The defendants further relied on their being in actual possession. Possession amounts to notice of such title as the person in possession may have, and any other person who takes a mortgage or other charge upon, or

——s. 60—

—*Ss. 60, 87—Registration of a deed—Omission to seal.*—The sealing of a deed is not an essential part of the act of registration. The omission of the Registering Officer to seal a deed is a mere defect of procedure, and the defect is cured by the provisions of s. 87 of the Registration Act. SITA NATH BANDOPADHYA *v.* BISSESSUR ROY CHAUDHURI (1901) . . . . . 6 C. W. N., 528

——ss. 64, 65—

See ante, s. 28 . I. L. R., 25 Bom., 50

——ss. 73, 74, 75, 76 and 77—

—*Refusal by Sub-Registrar to register, on the ground of denial of execution—Application to*

REGISTRATION ACT (III OF 1877)—*continued.*

—— ss. 73, 74, 75, 76 and 77—*concluded.*

tants, no suit will lie in a Civil Court to compel

——s. 77—

See ante, ss. 73, 74, 75, 76 AND 77.

—*Limitation—Registration—Suit to enforce registration—Limitation Act (XV of 1877), ss. 6, 14—Period of limitation, computation of.*—An

——s. 82—

See CHARGE—FORM OF CHARGE—FORGERY . I. L. R., 30 Calc., 822

REGISTRATION ACT (III OF 1877)—*concluded.*

—— s. 82—*concluded.*

See FALSE EVIDENCE—GENERAL CASES. [5 C. W. N., 44

——s. 87—

See ante, ss. 32, 34 AND 87.

See ante, s. 60 . 5 C. W. N., 528

REGULATION.

See BENGAL REGULATION.

See BOMBAY REGULATION.

See MADRAS REGULATION.

——1872—III—

See SONTHAL PARGANAS SETTLEMENT REGULATION.

RE-HEARING.

See CIVIL PROCEDURE CODE—
s. 108;
s. 360 . . 5 C. W. N., 816

See DISCHARGE OF ACCUSED. [I. L. R., 28 Calc., 652

See REVIEW.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—RE-HEARING.

RELATIONSHIP.

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 25 All., 131

—— statements as to—

See EVIDENCE ACT, s. 32.

RELEASE.

——deed of—

See STAMP ACT (II OF 1899), SCH. I, ART. 55, 23 AND 62 (*e*). [I. L. R., 24 All., 372

——of claim secured by mortgage—

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING. [I. L. R., 30 Calc., 755

RELIEF.

See CONSEQUENTIAL RELIEF.

——alternative—

See BENGAL TENANCY ACT, s 155. [I. L. R., 30 Calc., 1063

——not asked for in plaint—

See PLAINT—GENERAL CONSTRUCTION OF PLEADINGS . 5 C. W. N., 20

RELIGION.

——interference of religious prejudice w[ith] common law rights—

See INJUNCTION—SPECIAL CASES—C[UT]TING TREES . I. L. R., 24 All., 4

——offences relating to—

See MISCHIEF . I. L. R., 24 All., 1

—Offences relating to—*Indian Penal C[ode] (Act XLV of 1860), ss. 153, 296—Wanto[nly] giving provocation with intent to cause [riot] —Disturbing a religious assembly—Religi[ous] procession on highway—Legality—Chanting hymns by ordinary worshippers.*—By a dec[ree] in a civil suit, the *Tengalai* sect in a cert[ain] district were declared entitled to hold certain off[ices] [illegible]

[illegible]

Vadagalais followed, also chanting hymns A co[m]plaint was in consequence laid by a member of t[he] *Tengalai* sect, charging the *Vadagalais* (1) wi[th] wantonly giving provocation with intent to cau[se] [illegible]

[illegible]

to secure freedom from molestation when people mee[t] for the performance of acts in a quiet spot vested fo[r] [illegible]

[illegible]

persons use a highway together for some commo[n] [illegible]

[illegible]

Indian Penal Code. *Per* BENSON, J.—The [illegible]

RELIGION—*continued.*

that the *Tengalais* were not "lawfully" engaged

proved, and consequently no offence had been committed. *Per* BHASHYAM AYYANGAR, *J.* (at the first

found, to have voluntarily caused disturbance to an assembly lawfully engaged in the performance of

RELIGIOUS ENDOWMENTS ACT.

See ACT—1863—XX.

RELIGIOUS INSTITUTIONS.

See ACT—1863—XX.

See HINDU LAW—ENDOWMENT.

See MAHOMEDAN LAW—ENDOWMENT.

See RIGHT OF SUIT—CHARITIES.

RELIGIOUS PERSONS.

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS.

RELINQUISHMENT OF CLAIM.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE

[I. L. R., 25 All., 79

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS.

[6 C. W. N., 314

1.—*Civil Procedure Code (Act XIV of 1882), s. 43—Transfer of Property Act (IV of 1882), s. 99—Agreement to pay a debt partly in cash and to secure balance by mortgage, or, in default, to execute mortgage for whole amount—Failure to pay part in cash—Decree for such part—Second suit, to enforce giving of mortgage for balance, barred*—On a settlement of account between plaintiff and defendant No. 1, it was found that R15,505 were due by the first defendant to the plaintiff, and an agreement was made between them that R4,000 of this

and was duly registered. The first defendant

2.—*Civil Procedure Code (Act XIV of 1882),*

for damages for breach of the contract to convey, and as such was barred under s. 43 of the Code of Civil Procedure, inasmuch as the damages claimed

REGISTRATION ACT (III OF 1877)—*concluded.*

—— s. 82—*concluded.*

See FALSE EVIDENCE—GENERAL CASES. [5 C. W. N., 44

——s. 87—

See ante, ss. 32, 34 AND 87.

See ante, s 60 . 5 C. W. N., 528

REGULATION.

See BENGAL REGULATION.

See BOMBAY REGULATION.

See MADRAS REGULATION.

——1872—III—

See SONTHAL PARGANAS SETTLEMENT REGULATION.

RE-HEARING.

See CIVIL PROCEDURE CODE—
s. 108;
s. 360 . . 5 C. W. N., 816

See DISCHARGE OF ACCUSED. [I. L. R., 28 Calc., 652

See REVIEW.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—RE-HEARING

RELATIONSHIP.

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 25 All., 131

—— statements as to—

See EVIDENCE ACT, s. 32.

RELEASE.

——deed of—

See STAMP ACT (II OF 1899), SCH. I, ART. 55, 23 AND 62 (*e*). [I. L. R., 24 All., 372

——of claim secured by mortgage—

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING. [I. L. R., 30 Calc., 755

RELIEF.

See CONSEQUENTIAL RELIEF.

——alternative—

See BENGAL TENANCY ACT, s. 155. [I. L. R., 30 Calc., 1063

——not asked for in plaint—

See PLAINT—GENERAL CONSTRUCTION OF PLEADINGS . 5 C. W. N., 20

RELIGION.

——interference of religious prejudice with common law rights—

See INJUNCTION—SPECIAL CASES—CUTTING TREES . I. L. R., 24 All., 498

——offences relating to—

See MISCHIEF . I. L. R., 24 All., 155

—Offences relating to—*Indian Penal Code (Act XLV of 1860), ss. 153, 296—Wantonly giving provocation with intent to cause riot—Disturbing a religious assembly—Religious procession on highway—Legality—Chanting of hymns by ordinary worshippers.*—By a decree in a civil suit, the *Tengalai* sect in a certain district were declared entitled to hold certain offices connected with a temple, and as such office-holders it was their duty to recite certain hymns in processions The rights of the *Vadagalais* sect as ordinary worshippers were not affected by the decree, but the *Vadagalais* were ordered not to interfere with the [illegible]

[illegible]

Tengalai sect, charging the *Vadagalais* (1) with wantonly giving provocation with intent to cause [illegible]

[illegible]

turbance" had been proved, within the meaning of s. 296 *Per* SUBRAHMANIA AYYAR, J.—The object of s 296 of the Indian Penal Code presumably is to secure freedom from molestation when people meet for the performance of acts in a quiet spot vested for the time in the assembly exclusively; and not when they engage in worship in an unquiet place open to [illegible]

[illegible]

purpose does not detract in any way from such use being lawful; but, as the circumstances attending a [illegible]

[illegible]

RELIGION—*continued.*

that the *Tengalais* were not "lawfully" engaged in religious worship because they were engaged in it on a highway, could not be accepted. There is

the special protection given by the Penal Code to assemblies engaged in religious worship In the

subject to such user User of a highway as a place

(F.B, 1903) . I. L. R., 26 Mad., 554

RELIGIOUS ENDOWMENTS ACT.

See ACT—1863—XX

RELIGIOUS INSTITUTIONS.

See ACT—1863—XX.

See HINDU LAW—ENDOWMENT

See MAHOMEDAN LAW—ENDOWMENT.

See RIGHT OF SUIT—CHARITIES

RELIGIOUS PERSONS.

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS.

RELINQUISHMENT OF CLAIM.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE
[I. L. R., 25 All., 79

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS.
[6 C. W. N., 314

1.—*Civil Procedure Code (Act XIV of 1882), s. 43—Transfer of Property Act (IV of 1882), s. 99—Agreement to pay a debt partly in cash and to secure balance by mortgage, or, in default, to execute mortgage for whole amount—Failure to pay part in cash—Decree for such part—Second suit, to enforce giving of mortgage for balance, barred.*—On a settlement of account between plaintiff and

was dated 15th June, 1895, was put into writing, and was duly registered. The first defendant

agreed, plaintiff obtained a decree for specific performance, in pursuance of which the price was paid and a conveyance executed. Plaintiff was then obliged to sue for possession, when it was found that the sale did not bind the son's interest, and on grounds of convenience plaintiff was awarded the value of defendant's share instead of a decree for partition. He now sued to recover the balance of the price paid,

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM —*continued.*

could have been sued for in the alternative in the previous suit for specific performance. *Held* that the suit was not barred; it being in fact for the recovery of money paid on a consideration [illegible]

taken to have occurred when it was found, in the suit for possession, that the plaintiff was not entitled to recover the son's share; which date was less than [illegible]

3.—*Civil Procedure Code, s. 43.*—The owners of certain property, wishing to raise a sum of R10,500 on mortgage, executed two mortgages in favour of the same mortgagees, over the same lands, on the same day; one for R10,000, and another for R500. The latter instrument recited the bond for R10,000 as a prior mortgage The mortgagees then sued on the mortgage for R500, and obtained a decree, under which portions of the security were sold, subject to liability under the mortgage for R10,000 The mortgagees now sued on the mortgage for R10,000, when it was objected that the suit was not maintainable by reason of s 43 of the Code of Civil Procedure *Held* that this objection was not sustainable, and that, regarding the case as one of a mere personal claim on the instrument of mortgage, s. 43 did not apply SESHA AYYAR *v.* KRISHNA AYYANGAR (1900) . I. L. R., 24 Mad., 96

4.—*Civil Procedure Code, s. 43—Purchaser's suit for specific performance—Former suit for disturbance of possession.*—In a suit by purchasers against vendors for specific performance of their agreement, it appeared that both parties had previously sued, praying relief only as regards possession of the property sold or compensation for its disturbance, the purchasers in their cross-suit omitting to seek the relief now claimed. *Held* that it was barred by s. 43 of the Civil Procedure Code. RANGAYYA GOUNDAN *v.* NANJAPPA RAO (1901)

[L. R., 28 I. A., 221:
s.c., I. L. R., 24 Mad., 491; 6 C. W. N., 17

5.—*Civil Procedure Code, s 43.—Quære*—Can a mortgagee who has several mortgages on the same property treat them, with respect to the provisions of s. 43 of the Civil Procedure Code, as separate causes of action, or must he bring one suit on all his mortgages? GOPAL *v.* PIRTHI SINGH (1902)

[I. L. R., 24 All., 429:
s.c., L. R., 29 I. A., 118; 6 C. W. N., 889

6.—*Civil Procedure Code, s 53—Suit on a mortgage for sale* [illegible] *the pl*[illegible] *prayer* [illegible] *sale.—*[illegible] asking [illegible]

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM —*continued.*

other relief to which the plaintiff might be entitled." The mortgage sued upon contained the usual covenant for payment, in addition to the further covenant that in default of payment proceedings might be taken against the mortgaged property. *Held* that there was nothing to prevent such plaintiff in the course of the suit relinquishing his claim for sale of the mortgaged property, and asking merely [illegible]

7.—*Civil Procedure Code, ss. 43, 44—Cause of action—Misjoinder of causes of action—Omission to claim all the reliefs to which plaintiff is entitled on the cause of action*—One *R D* brought a suit against two persons *M* and *G*, claiming to recover certain cash and ornaments belonging to one Sahai, deceased. To that suit *B R* and *B*, who had previously brought a suit for certain immovable property belonging to the same estate, applied to be, and were, added as defendants. After this *H L*, [illegible]

8.—*Civil Procedure Code (Act XIV of 1882), s 43—Former suit for injunction to restrain defendants from removing shells stored on certain land—Dismissal as not maintainable—Subsequent conversion by defendants of the shells—Suit for their value—Maintainability—Agricultural tenants—* [illegible]

are used for the manufacture of lime, and stored them on the land The landlords had let the right to dig these shells to plaintiff, who, in conjunction with the landlords, and while the shells were still on the land, sued for a perpetual injunction [illegible]

shells, and converted them to their own use. Plaintiff now sued for their value; when it was pleaded that the suit was barred by s. 43 of the Code of Civil Procedure. *Held* that the suit was not barred. CHALADOM THOLAN *v.* KAKKATH KUNHAMBU (1902) . . . I. L. R., 25 Mad., 669

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM —*concluded*

9.—*Civil Procedure Code (Act XIV of 1882), s 43—Omission to include present claim for land in a former suit for other land—Ground of title similar in both suits, but defendants different*

relinquish that possession ...

their late father, thereupon, namely in 1887, instituted a suit and obtained a decree against that person for the recovery of lands *B* In 1896 the ... attempted to take possession of the lands ... person, ... posses- ... nt suit against that other person, in which they also claimed, as the heirs of their late father, to recover possession of the lands *A* The persons who had withheld possession of the lands *B* and *A* respectively, were different, and the High Court found as a fact that there had been no combination or privity between them in respect of the lands which they ...

claim in the previous suit: *Held* that the suit was maintainable DAMPANABOYINA GANGI *v.* ADDALA RAMASWAMI (1902) . **I. L. R., 25 Mad., 736**

RELINQUISHMENT OF TENANCY.

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT OR SURRENDER OF TENANCY.

REMAND.

See PRACTICE—CIVIL CASES—REMAND

——**order of—**

See APPEAL—

EX PARTE CASES ; **[5 C. W. N., 153**

ORDERS . **7 C. W. N., 440**

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS. **[I. L. R., 25 All., 629**

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. **[I. L. R., 29 Calc., 60**

REMAND—*continued.*

——**refusal of—**

See PARTITION—MISCELLANEOUS CASES **[6 C. W. N., 698**

1. POWER OF REMAND.

1.—*Civil Procedure Code, ss. 562, 564, 566—* ...

remitting a case to the Court of first instance ...

Das v. *Anoraji* (1894), ... *Salima Bibi* v *Sheikh Muhammad (1895), I. L. R, 18 All, 131; Mihin Lal* v. *Imtiaz Ali (1896), I L. R., 18 All, 332; Rajit Ram* v. *Katesar Nath (1896), I. L. R, 18 All, 396; Ganesh Bhikaji Jurekar* v. *Bhijaki Krishna Jurekar (1886), I. L R, 10 Bom, 398;* and *Kelu Mulachers Nayar* v. *Chendu (1896), I. L. R, 19 Mad, 157,* referred to HABIB BAKHSH *v.* BALDEO PRASAD (1901) . . **I. L. R., 23 All., 167**

2 CASES OF APPEAL AFTER REMAND

2.—**Appeal from order of remand**—*Civil Procedure Code (Act XIV of 1882), ss 53, 562—Remand order, informal—Appeal.*—When an ... Court directs the Court of first instance ...

[6 C. W. N., 840

3. —————— *Civil Procedure Code (Act XIV of 1882), s. 588 (28)—Appeal against order remanding case for disposal—Decision by Sub-Collector in summary suit under Rent Recovery Act—Remand by District Court—Appeal —Rent Recovery Act (Mad. Act VIII of 1865), s 69—"Judgment."*—In a summary suit under the Rent Recovery Act, the Sub-Collector held a *patta* to be improper, and released certain property from attachment. On an appeal being preferred, the District Judge reversed the finding of the Sub-Collector, and remanded the case, under s. 562 of the Code of Civil Procedure, for disposal according to law. Plaintiff appealed to the High Court against the order of remand, when it was objected that no appeal lay:

REMAND—*concluded.*

2. CASES OF APPEAL AFTER REMAND—*concluded.*

Held that an appeal lay. It was competent to the District Judge to make the order of remand under

Code of Civil Procedure. It was also a formal expression of a right claimed in a Civil Court. VEERASWAMY *v.* MANAGER, PITTAPUR ESTATE (1902) . . . . I. L. R., 26 Mad., 518

4.—Validity of order of remand—*Civil Procedure Code (Act XIV of 1882), ss 562, 566, 578, 588—Jurisdiction, meaning of the term—Remand order in contravention of s. 564—Whether the remand and the subsequent proceedings null and void—Whether legality of the remand order could be questioned on an appeal from the final decree*—The term "jurisdiction," in s 578 of the

decree was passed by the Court in favour of the plaintiff On appeal the decree was modified by the

remand order and the subsequent proceedings could be questioned on second appeal from the final decree, although no appeal had been preferred against the order itself under s 588, cl (28), of the Civil Procedure Code MOHESH CHANDRA DASS *v* JAMIRUDDIN MOLLAH (1901)
[I. L. R., 28 Calc., 324; s.c., 5 C. W. N., 509

RE-MARRIAGE.

See HINDU LAW—DISQUALIFICATIONS—RE-MARRIAGE

RENT.

See ABATEMENT OF RENT.

See APPORTIONMENT OF RENT.

See ENHANCEMENT OF RENT

See MADRAS RENT RECOVERY ACT.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT

RENT—*continued.*

——additional, for additional area—

See BENGAL TENANCY ACT—

s. 52; . I. L. R., 29 Calc., 247 [6 C. W. N., 318, 360

s. 158 . . 6 C. W. N., 592

——appeal in suit for—

See APPEAL—ACTS—BENGAL TENANCY ACT, s 153 . . 7 C. W. N., 908

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—RENT.

——arrears of—

See BENGAL TENANCY ACT, SCH. III—

ART. 2;

ART. 6 . . 5 C. W. N., 763

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

See LIMITATION ACT, 1877, SCH. II, ART. 110.

See RENT, SUIT FOR

See SALE FOR ARREARS OF RENT.

See SALE IN EXECUTION OF DECREE—IMMOVABLE PROPERTY. [5 C. W. N., 497

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [I. L. R., 28 Calc., 532; 5 C. W. N., 515

See VENDOR AND PURCHASER—BREACH OF CONTRACT . 7 C. W. N., 905

——deposit of, in Court—

See BENGAL TENANCY ACT, SCH. III, ART. 2(*a*) . I. L. R., 29 Calc., 283

——evidence as to rate of—

See EVIDENCE—PAROL EVIDENCE—EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES. [6 C. W. N., 242

——in lieu of interest—

See MORTGAGE—CONSTRUCTION—USUFRUCTUARY MORTGAGE. [L. R., 29 I. A., 148

——*liability for*—

See INHERITANCE . 5 C. W. N., 169

See JOINT TENANCY . 6 C. W. N., 111

See LANDLORD AND TENANT—

OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION; . 5 C. W. N., 816

LIABILITY FOR RENT;

HOLDING OVER AFTER TENANCY. [I. L. R., 27 Bom., 262

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

RENT—*concluded.*

——limit of—

See BENGAL TENANCY ACT, s 48, CL. (*a*) [I. L. R., 28 Calc., 166

——payment of—

See LANDLORD AND TENANT—

CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT;

PAYMENT OF RENT.

——presumption as to amount of—

See BENGAL TENANCY ACT, s. 51. [6 C. W. N., 589

——presumption as to fixity of—

See BENGAL TENANCY ACT, s. 50 [5 C. W. N., 60

——rate of—

See KHOTI SETTLEMENT ACT, s. 8. [I. L. R., 27 Bom., 71

——receipt of—

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

——receipt of proportionate parts of, from various tenants—

See BENGAL TENANCY ACT, s. 88 [6 C. W. N., 823

——recovery of—

See LAND REGISTRATION ACT (BEN ACT VII OF 1876), s. 78 [5 C. W. N., 360

See MADRAS RENT RECOVERY ACT.

——settlement of—

See BENGAL TENANCY ACT, s. 107. [I. L. R., 28 Calc., 676

——suspension of—

See N.-W. PROVINCES RENT ACT (XII OF 1881), s. 23. [I. L. R., 24 All., 465

——to whom payable—

See LANDLORD AND TENANT—TRANSFER BY LANDLORD . 7 C. W. N., 454

RENT, SUIT FOR.

See ACQUIESCENCE . 7 C. W. N., 170

See APPEAL—N. W. P. ACTS—N. W. P. RENT ACT (XII OF 1881), s. 189. [I. L. R., 23 All., 283

See BENGAL TENANCY ACT.

See ESTOPPEL—

ESTOPPEL BY JUDGMENT; [I. L. R., 28 Calc., 318

ESTOPPEL BY CONDUCT. [I. L. R., 29 Calc., 126

RENT, SUIT FOR—*continued.*

See JURISDICTION—SUITS FOR LAND-RENT.

See LANDLORD AND TENANT—

LIABILITY FOR RENT;
PAYMENT OF RENT.

See N.-W. PROVINCES RENT ACT (XII OF 1881), CH II AND s. 93. [I. L. R., 23 All., 270

See PARTIES—PARTIES TO SUITS—RENT, SUITS FOR, AND INTERVENORS IN SUCH SUITS.

See RES JUDICATA—

ESTOPPEL BY JUDGMENT; [6 C. W. N., 66

MATTERS IN ISSUE—ILLEGAL CESS. [I. L. R., 28 Calc., 17

See RESUMPTION—EFFECT OF RESUMPTION—EFFECT ON PATTA [L. R., 30 I. A., 159

See SMALL CAUSE COURT—MOFUSSIL—JURISDICTION—RENT.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [I. L. R., 28 Calc., 116

1.—Act X of 1859—*Land—Act X of 1859, s. 23, cl. 4—Mining lease—Revenue Courts, jurisdiction of—Suits, cognizance of.*—The word 'land', in s. 23, cl. 4, of Act X of 1859, refers to land granted for agricultural or horticultural purposes, [illegible]

[I. L. R., 28 Calc., 485; s.c., 5 C. W. N., 840

2.—By what Court triable—*Jurisdiction—Munsif, jurisdiction of—Bengal Tenancy Act (VIII of 1885), s. 144—Civil Procedure Code (Act XIV of 1882), ss. 15 and 17—Civil Courts Act (XII of 1887), s. 19—Cause of action—Pecuniary limitation—Second appeal.*—S. 144 of the Bengal Tenancy Act is controlled by ss. 15 and 17 of the Civil Procedure Code. A suit for rent is therefore to be instituted, subject to pecuniary limitations, in the Court of the lowest grade competent to try it. FAZLUR RAHIM ABU AHMED *v.* DWARKA NATH CHOWDHRY (1903)

[I. L. R., 30 Calc., 453; s.c., 7 C. W. N., 402

3.—Right of suit—*Civil Procedure Code (Act XIV of 1882), s. 12—Suit for cancellation of patni and for mesne profits—Rent for the same period—Maintainability of such a suit.*—Plaintiff, in the first instance, sued the defendant for cancellation of the *patni* lease which the latter held under him, and for mesne profits. He also brought a

RENT, SUIT FOR—*concluded.*

second suit against the defendant, to recover arrears of rent for the same period. *Held* that s 12, Civil Procedure Code, was no bar to the maintainability of the second suit, and that plaintiff could simultaneously prosecute the two suits. The decree of the second suit was not, however, allowed to be executed till the first suit was finally decided in appeal. Plaintiff brought the suit in the double ... of a ... ered in ... 1876 ... fficient ... plain- ... Deity. ... Roy ... C. W. N., 720

4. ———— *Landlord and tenant —Enhancement of rent, suit for rent and for —Maintainability of suit—Civil Procedure Code (Act XIV of 1882), s. 45—Onus—Raiyat at fixed rate.*—A suit for both enhancement and arrears of rent at an enhanced rate is maintainable The causes of action, although separate, may be combined under s. 45, Civil Procedure Code. In a suit for ... endant ... URDAR ... C. W. N., 880

5.—Settlement proceedings—*Bengal Tenancy Act (VIII of 1885), Ch. X—Record-of rights—Publication of record—Rate of rent.*—In a suit for rent which accrued due after the final publication of a record-of-rights, the plaintiff relied ... rent. *Held* that the plaintiff was entitled to claim the rate of rent as stated in the Settlement proceedings PUDMANUND SINGH *v.* GHANSHYAM MISSER (1902) . . . . . 6 C. W. N., 914

RENUNCIATION OF RIGHTS.

See WAIVER.

REPEAL OF ACT, EFFECT OF.

See CALCUTTA MUNICIPAL ACT, 1899—
ss. 391 AND 449; 7 C. W. N., 374
s 449 . . 7 C. W. N., 554

See PETROLEUM ACT (VIII OF 1899), ss 1 (3), 11 AND 15 . 7 C. W. N., 658

REPORT.

—of Commissioner—

See COMMISSIONER FOR TAKING ACCOUNTS . . . 5 C. W. N., 892

— of police—

See POLICE REPORT.

REPORT—*concluded.*

— of Registrar of High Court—

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR.

— post mortem—

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE . . 6 C. W. N., 98

REPORTS OF CASES.

See LAW REPORTS ACT.
[I. L. R., 28 Calc., 289

— The proper use to be made, by Courts, of Reports of cases, considered. SOURINDRA MOHUN TAGORE *v.* SIROMONI DEBI (1900)
[I. L. R., 28 Calc., 171
s.c., 5 C. W. N., 307.

REPRESENTATIVE.

See CIVIL PROCEDURE CODE, s 244—PARTIES TO SUIT.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.

REPRESENTATIVE OF DECEASED PERSON.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.
[I. L. R., 26 Mad., 101

See EXECUTION OF DECREE — EXECUTION BY AND AGAINST REPRESENTATIVES.

See PARTIES—SUBSTITUTION OF PARTIES.

— appeal by—

See MALICIOUS PROSECUTION.
[I. L. R., 26 Mad., 499

— execution of decree—

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

— not made party—

See APPEAL—ORDERS.
[I. L. R., 24 All., 532

— suit against—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—MINOR.
[I. L. R., 25 Bom., 574

See LIMITATION ACT, 1877, SCH. II, ART. 120 . . I. L. R., 25 All., 55

— suit by—

See CERTIFICATE OF ADMINISTRATION.

See CIVIL PROCEDURE CODE, s. 424.
[I. L. R., 25 All., 187

1.—Heir-at-law and residuary legatee—*Decree-holder—Judgment-debtor—Substitution of*

REPRESENTATIVE OF DECEASED PERSON—*continued*

heir-at-law and residuary legatee as legal representative—Residuary legatee in possession, effect of—Executor de son tort—Probate and Administration Act (V of 1881), ss. 4, 12, 14, 15, 19, 38, 82, 187—Succession (Act X of 1865), s. 190—Civil Procedure Code (Act XIV of 1882), s. 234—Pending the execution of a decree, the judgment-debtor died, leaving a will under which *R K* was the residuary legatee. She took possession of the estate, and applied for letters of administration with the will annexed. The will was ultimately found to be true, and letters ordered to be granted. In the meantime, *R K* and the heir-at-law were substituted in place of the judgment-debtor in the execution proceedings, and an order was made between the parties in the matter of the execution. *Held* that the order was a good and binding order. *Held, further*, that a residuary legatee in possession of the estate of a deceased judgment-debtor could not be regarded as an executor *de son tort*, so that his acts would not be binding upon the legal representative. *Prosunno Chunder Bhuttacharjee* v *Kristo Chytunno Pal (1878), I L R, 4 Calc., 342; Janakiv. Dhanu Lall (1891), I. L. R, 14 Mad., 454; Chathakelan v. Govinda Karumiar (1893), I L R, 17 Mad, 186*, referred to CHUNI LAL BOSE v OSMOND BEEBY (1903)
[I. L. R., 30 Calc., 1044

2.—Hindu estate—*Contract Act (IX of 1872), s. 45—Right of succession by legal representative—Aliyasantana law—Fund settled on marriage of husband and wife—Interest payable to both jointly—Death of husband—Claim by widow by right of survivorship—Right of husband's legal representative to his share*—Upon the marriage of first defendant with *K*, a sum of money was settled by first defendant's mother on first defendant or on *K* This money was lent on mortgage, and, by the terms of the mortgage, interest was payable by the mortgagors to first defendant and to her husband *K*, jointly, with the exception of that which would accrue in respect of the last year of the term, which, together with the principal sum secured by the mortgage, was to be paid to first defendant herself. *K* died, whereupon plaintiff, as *K*'s legal representative, brought the present suit to recover the interest due under the mortgage. *Held* that plaintiff was entitled, under s. 45 of the Contract Act, as the legal representative of *K*, to a moiety of the interest which had accrued since the death of *K*, first defendant being entitled to the other moiety, and that the right to the whole of the interest did not pass by survivorship to first defendant. The circumstance that *K* and first defendant intended to live and did in fact live together as husband and wife under the *Aliyasantana* law was insufficient to raise the presumption of a contract that there was to be a right of succession by survivorship between *K* and first defendant in respect of the settled fund. KANTHU PUNJA v. VITTAMMA (1901)
[I. L. R., 25 Mad., 385

3. ———— *Hindu law—Rights of unsecured creditors by way of charge or lien on the inheritance—Position of legal representative*

REPRESENTATIVE OF DECEASED PERSON—*concluded.*

—*Distribution of assets.*—The unsecured creditors of a deceased Hindu have no charge or lien on the inheritance If payments are not made by the heir rateably, it does not follow that he has failed to apply the assets duly Every payment on account of a debt is perfectly lawful, irrespective of its effect upon the other creditors, and is a due application of the assets, within the meaning of s 252 of the Code of Civil Procedure. There is no analogy between the case of an executor who is governed by the special provisions of the Succession Act, and that of a legal representative under the Hindu law, with reference to the question of the distribution of the assets among creditors. Where property of a deceased remains in the hands of the legal representative, it does not necessarily follow that a creditor is entitled to proceed against it as assets in the hands of the legal representative The question to be considered is the real effect of what has been done, and, where payments have been made by the legal representative to the extent of the full value of the property of the deceased which has come into his hands, a decree cannot be executed, even although he may still have in his possession property which originally belonged to the deceased. VEERASOKKARAJU v PAPIAH (1902) . . . I. L. R., 26 Mad., 792

REPUTE.

——evidence of—

See SECURITY FOR GOOD BEHAVIOUR.

RE-SALE.

See CONTRACT—BREACH OF CONTRACT.
[7 C. W. N., 562

RESIDENCE.

See FOREIGN COURT, JUDGMENT OF.
[5 C. W. N., 741

See HINDU LAW—

HUSBAND AND WIFE;
[I. L. R., 28 Calc., 751

MAINTENANCE—RIGHT TO MAINTENANCE—SON'S WIDOW.
[I. L. R., 29 Calc., 557

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING.

See SECURITY FOR GOOD BEHAVIOUR.
[5 C. W. N., 29

RESISTANCE.

——to execution of warrant of attachment issued by Civil Court—

See WARRANT OF ATTACHMENT.
[I. L. R., 29 Calc., 244

RESISTANCE OR OBSTRUCTION TO ARREST.

See WARRANT OF ARREST—CIVIL CASES.
[5 C. W. N., 843
6 C. W. N., 845

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See LIMITATION ACT, 1877, SCH. II, ART. 11 I. L. R., 26 Bom., 146

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
[I. L. R., 29 Calc., 25

1.—Dispossession—*Symbolical possession, effect of—Civil Procedure Code (Act XIV of 1882), ss. 318, 335—Jurisdiction.*—Symbolical possession does not amount to dispossession as contemplated by s 335 of the Code of Civil Procedure. IBRAHIM MULLICK *v.* RAMJADU RAKSHIT (1903)
[I. L. R., 30 Calc., 710

2.—Obstruction—*Civil Procedure Code (Act XIV of 1882), s 331—"Possession"—Constructive possession—Obstruction to possession in execution of decree—Construction*—The word "possession", as used in s. 331 of the Civil Procedure Code (Act XIV of 1882), is not limited to actual physical possession. It includes also constructive possession, such as possession by a tenant. So held by CANDY and TYABJI, JJ, WHITWORTH, J., dissenting. Where premises sought to be recovered in execu-

[I. L. R., 25 Bom., 478

3. —————— *Civil Procedure Code (Act XIV of 1882), s. 331—Specific Relief Act (I of 1877), s 9—Suit for possession—Execution of decree—Obstruction—Application for removal of obstruction registered as a suit—Questions arising in such suit*—In the case of a claim numbered and registered, under s 331 of the Civil Procedure Code (Act XIV of 1882), as a suit between a decree-holder and an obstructing claimant, the only issues arising are whether the person obstructing was in possession of the property in question on his own account or on account of some person other than the judgment-debtor (i e, the defendant in the original suit) No question requiring the decree to be reopened can be raised. MAHOMED ISUB *v.* BASHOTAPPA BIN TAKAPPA (1903)
[I. L. R., 27 Bom., 302

RES JUDICATA.

RES JUDICATA—*continued.*

See BENGAL TENANCY ACT—
s. 51; . . 6 C. W. N., 589
s. 107 . I. L. R., 28 Calc., 676

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.
[I. L. R., 25 All., 546

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

See INJUNCTION—DISOBEDIENCE OF ORDER FOR INJUNCTION.
[I. L. R., 23 All., 465

See POSSESSION—SUITS FOR POSSESSION.
[I. L. R., 26 Mad., 514

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS.
[6 C. W. N., 314

1. GENERAL CASES.

1.—Execution proceedings—*Execution of decree—Principle of res judicata as applied to execution proceedings—Succession certificate—Act VII of 1889 (Succession Certificate Act), s 4*—The principle of *res judicata* applies to prevent parties raising a second time in the same suit, or in the same execution proceedings, an issue which, in that suit or in the execution proceedings in that suit, had previously been determined. The principle of *res judicata* does not depend for its application upon the question whether the decision which is to be

judicata by saying that he did not appeal

Kuari (1883), I. L. R., 6 All., 269, referred to BEHARI LAL *v.* MAJID ALI (1897)
[I. L. R., 24 All., 138

2.—No decision in previous suit—*Civil Procedure Code (Act XIV of 1882), s 13.*—Where a certain matter was not really dealt with and decided in a previous suit, although an issue was raised in regard to that matter, a subsequent suit involving the same matter would not be barred by reason of the previous suit. UMESH CHUNDER DEY *v.* SHARBESSUR CHUNDER (1901)
[5 C. W. N., 304

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT.

3.—Assignment of revenue—*Assignee of Government revenue—Interest on arrears—Act XII of 1881 (N.-W. P. Rent Act), s. 93 (i)—Act XVIII of 1873 (N.-W. P. Land revenue Act), s. 148—Civil Procedure Code, s. 13—Act VIII of 1859 (Civil Procedure Code), s. 2—Held* by BANERJI and AIKMAN, JJ., that an assignee of Government revenue cannot sue for interest on arrears. *Bithal Das* v. *Harphul (1884), I. L. R., 6 All., 503,* referred to. Where *A*, assignee of Government revenue, sued *B* for arrears of revenue and interest thereon in regard to one *khata*, and got a decree which included interest, and in a subsequent similar suit in regard to another *khata B* again resisted *A's* claim for interest: *Held* by BANERJI, *J.*, that the fact that the reasoning upon which the former judgment was based was equally applicable to the second case did not give the former judgment the force of *res judicata* in the second case. *Held*

4. ——— *Civil Procedure Code, s. 13—Assignment of the Government revenue of a village divided into "khatas"—Claim for interest on revenue in arrear—Decision as to one khata res judicata in respect of other khatas.*—The plaintiff was assignee of the Government revenue of a certain village. The village was divided into *khatas*, but the title to the revenue in respect of each and every *khata* was one and the same. The plaintiff sued to recover arrears of revenue due in respect of *khata* No. 29, with interest. On his right to receive

5.—Decrees for cesses—*Evidence—Presumption—Landlord and tenant—Decrees in suit for Road and Public Works cesses.*—Previous

of the tenant. RICKETTS *v.* RAMESWAR MALIA (1900) . . . I. L. R., 28 Calc., 109

6.—Judgment of higher Court—*Civil Procedure Code (Act XIV of 1882), s. 13—Suit by A against B in City Civil Court—Subsequent suit in High Court by B against A, raising same*

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*continued.*

the Madras High Court on its Original Side, against *A*. The parties in both Courts were the same, and the matters in controversy between them were substantially the same. The latter related to

res judicata, so far as it relates to prohibiting the re-trial of an issue, refers, not to the date of the commencement of the litigation, but to the time when the Judge is called upon to decide the issue. *Balkishan* v. *Kishan Lal, I. L. R., 11 All., 148,* approved and followed. GURURAJAMMAH *v.* VENKATAKRISHNAMA CHETTI (1901)

[I. L. R., 24 Mad., 350

7.—Mistake of law—*Civil Procedure Code (Act XIV of 1882), s. 13.*—*D* and *R* were divided brothers. *R*, in conjunction with the senior of his two wives, and to the exclusion of the junior wife, adopted a son of *D* on 27th October, 1879. On the same day, *R* settled some properties on his junior

for a declaration that he, as the reversionary heir of the deceased adopted son, was entitled to succeed to the properties left by *R* (including those settled on the widow and daughter) after the lifetime of the widow. The claim was dismissed in so far as it related to the settled property, but *D* was declared to be entitled, as reversioner, to the other properties left by *R*, after the lifetime of the widow. In 1891

8.—Mortgage—*Act IV of 1882 (Transfer of Property Act), ss. 60, 92 and 93—Mortgage—Redemption—Decretal money not paid in within the time limited by the decree—Decree not in*

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*concluded.*

accordance with the Transfer of Property Act—Subsequent suit for redemption not barred—Civil Procedure Code, ss. 13, 244.—The plaintiffs brought a suit for redemption of a usufructuary mortgage, and obtained a decree for redemption, conditioned on their paying a certain sum within a time specified in the decree. This decree, however, instead of going on to direct that in default of payment by the due date the property should be sold, directed that if payment was not made within the time fixed the "judgment should be deemed to be non-existent." The plaintiffs did not pay the decretal amount within the time fixed, but some years afterwards brought a second suit for redemption. *Held* that the second suit was not, under the circumstances, barred, either by reason of anything contained in the Transfer of Property Act, 1882, or by s. 13 or s 244 of the Code of Civil Procedure. *David Hay* v. *Razi-ud-din (1897), I. L. R, 19 All., 202,* overruled. *Sami*

1868, p. 381; Sheikh Golam Hoosein v. *Musumat Alla Rukhee Beebee, N.-W P. H. C. Rep.,*

(1870), 13 Moo. I. A., 404, referred to. SITA RAM *v.* MADHO LAL (F B., 1901) I. L. R., 24 All., 44

9.—**Question of title raised in rent suit**—*Civil Procedure Code (Act XIV of 1882), s. 13*—Where a question of title was decided in a suit for

15 Calc., 766, distinguished. NITYA NUNDA SARKAR *v* RAM NARAIN DAS (1901) 6 C. W. N., 66

3. ADJUDICATIONS.

10.—**Division of produce**—*Act XII of 1881 (N.-W. P. Rent Act), s. 43—Landholder and tenant—Suit to recover rent in kind—Duty of officer appointed to divide produce or appraise standing crops.*—Where, under s 43 of the North-Western Provinces Rent Act, 1881, an officer is

RES JUDICATA—*continued.*

3. ADJUDICATIONS—*continued.*

11.—**Execution of decree**—*Limitation Act (XV of 1877), Sch. II, Art. 179—Application in execution more than three years after previous application—Omission on part of judgment-debtor to set up bar by limitation—Adjudication on application—Subsequent application in execution—Objection on ground that previous application was barred.*—A decree was obtained on 16th March, 1893, and a petition in execution was presented on 8th February, 1894 The next petition in execution was presented on 2nd July, 1897, when the judgment-debtor, though he had notice of it, did not raise the defence of limitation. An order was passed on the petition, for the issue of a warrant for the arrest of the defendant, and the warrant was duly issued. Within three years of that petition the present application in execution was made, when it was objected that, as the application in 1897 had been presented more than three years from the previous application in 1894, it was barred, and that in consequence the present application must also be barred. *Held* that it was not open to the judgment-debtor now to raise the objection that the application of 1897 was barred. He had had notice of that application, and had raised no objection to it. Execution had been ordered in pursuance of it, which

Chowdhry, L R, 8 I. A., 123, followed. LAKSHMANAN CHETTI *v.* KUTTAYAN CHETTI (1901) [I. L. R., 24 Mad., 669

12.—**Oath**—*Oaths Act (X of 1873)—Decree upheld in appeal on strength of oath—Final adjudication.*—A suit of 1898 had been affirmed on appeal
Oaths
origina
arrived
of fac
tion.

RES JUDICATA—*continued.*

3. ADJUDICATIONS—*concluded.*

13.—Redemption—*Transfer of Property Act (IV of 1882), s. 92—Decree for redemption—Omission to execute—Maintainability of subsequent suit on same mortgage—Civil Procedure Code (Act XIV of 1882), ss. 13, 244*—Where a suit for redemption has been instituted, and a decree for redemption has been passed therein, but not executed, a subsequent suit is not maintainable for the redemption of the same mortgage. VEDAPURATTI *v.* VALLABHA VALIYA RAJA (F B., 1902)

[I. L. R., 25 Mad., 300

14.—Summary proceeding—*Bengal Tenancy Act (VIII of 1885), s 105 (103A), s. 106—Distinction between order under s 105 (103A) and s. 106*—When a Revenue-officer disposes of an objection summarily under s 105 (103A of the amended Act) of the Bengal Tenancy Act (VIII of 1885), without adopting the procedure laid down in the Code of Civil Procedure for the trial of suits,

4. ORDERS IN EXECUTION OF DECREE.

15.—Application for two reliefs—*Civil Pro-*

[I. L. R., 21 Mad., 301

16.—Limitation—*Order in execution of decree—Limitation—Previous application for execution refused, and judgment-debtor's objection as to*

RES JUDICATA—*continued.*

4. ORDERS IN EXECUTION OF DECREE—*concluded.*

its order refused the application for execution and disallowed the objection of the judgment-debtor. On a subsequent application by the decree-holder, the judgment-debtor again objected to the execution on the ground that, inasmuch as the previous application was barred by limitation, the subsequent application was also barred. *Held* that the judgment-debtor was not precluded from raising the objection that the previous application was barred by limitation *Mungul Pershad Dichit* v. *Grija*

51, distin-

... NATH

... W. N., 80

17.—————Although the execution of a decree may have been actually barred by time at the date of an application made for its execution,

5 CAUSES OF ACTION.

18.—Continuing guarantee—*Civil Procedure Code (Act XIV of 1882), s. 13—Suit for arrears of maintenance—Former suit for arrears for a different period—Surety—Continuing guarantee—Pleadings by surety denying liability in a suit do not operate as notice of revocation of suretyship—Contract Act (IX of 1872), s. 130.*—

RES JUDICATA—*continued.*

5. CAUSES OF ACTION—*continued.*

the plaintiff sued both defendants to enforce her rights under the settlement, and (*inter alia*) for arrears of maintenance for ten months and sixteen days from the 10th November, 1897. The defendants pleaded that the deed was void for want of consideration. The first Court found that the settlement was not void, and passed a decree against both the defendants, but, as to the payment of arrears of maintenance, the decree was against the first defendant only. The second defendant appealed against the decree, so far as it was against him, contending that the settlement was not in any way binding on him. The plaintiff filed cross-objections to the decree, contending that the second defendant ought to have been held liable for the arrears of maintenance. At the hearing of the appeal, however, the plaintiff withdrew her cross-objections, and the decree of the first Court was confirmed, with costs In 1901 the plaintiff filed this suit against both defendants, to recover arrears of maintenance for two years and nine months, commencing from the 27th September, 1898. The second defendant pleaded that, inasmuch as he had not been held liable for maintenance in

right to sue the second defendant as surety in respect of the subsequent arrears claimed in the present suit. It was contended for the second defendant that the pleadings in the former suit operated as notice under s. 130 of the Contract Act (IX of 1872), and put an end to his contract of guarantee. *Held* that the denial by the second defendant of his liability in the pleadings in that suit was made for the purposes of pleading, and could not have any other effect than was given to it in the suit itself It could not operate as notice under s 130 of the Contract Act. BHIKABHAI RATANCHAND *v.* BAI BHURI (1903) . . . **I. L. R., 27 Bom., 418**

19.—Joinder of causes of action—*Civil Procedure Code (Act XIV of 1882), s. 13—Competency of Court to try subsequent suit—Pecuniary jurisdiction—Suit of a Small Cause Court nature—Issue decided in a previous suit not subject to second appeal.*—In order to make a matter *res judicata*, it is not necessary that the two suits must be open to appeal in the same way *Rai Charan Ghose* v *Kumud Mohan Dutt (1897), I. L. R.,*

20.—Security for costs—*Civil Procedure Code (Act XIV of 1882), s 381—Order that plaintiff should give security for costs—Failure to comply with order—Dismissal of suit—Subsequently, fresh suit brought on same cause of action—Dismissal of first suit no bar—First suit to recover property direct from defendants—Second*

RES JUDICATA—*continued.*

5. CAUSES OF ACTION—*concluded.*

took possession of his estate The plaintiff returned to Bombay, and as surviving member of the joint Hindu family sued (No. 124 of 1900) the widows for the property. They alleged that he was not a resident of British India, and obtained an order, under s. 380 of the Civil Procedure Code (XIV of 1882), directing that he should give security for costs, or in default his suit should be dismissed. Being unable to comply with the order, his suit was dismissed under s. 381 of the Code. Having learned for the first time during the course of that suit that, in his absence from Bombay, the deceased Naranji Virji had executed two deeds of settlement, by one of which he purported to settle some of the family property in charity and by the other to settle another portion on his widows, the plaintiff subsequently brought this suit to recover the joint family property from the widows He made the trustees of the two deeds of settlement defendants to the suit, and prayed for a declaration that Naranji

rst and second
at the former
t having been
rocedure Code
maintainable.

Held that the dismissal of a suit under s 381 of the Civil Procedure Code does not bar a fresh suit for the same cause of action. *Per Curiam.*—If I had been of opinion that a fresh suit on the same subject-matter could not be brought, I should have held that in respect of all matters included in the deed of settlement it was not a suit on the same subject-matter. HARIRAM MOHANJI *v.* LALBAI (1902) **I. L. R., 26 Bom., 637**

6 MATTERS IN ISSUE.

21.—Illegal cess—*Code of Civil Procedure (Act XIV of 1882), s. 13, Expln. II—Illegal cess not objected to in former suit for rent—Bengal Tenancy Act, 1885, s. 74*—Where, in a suit for rent, the rent claimed expressly includes an item which is objected to as an illegal cess, the mere fact that, in a previous rent-suit, between the same parties regarding the same tenure, the defendant did not

done so,
rmination
him from
Kailash

RES JUDICATA—*continued.*

6 MATTERS IN ISSUE—*continued.*

[illegible]

22.—Matter for ground of attack—*Civil Procedure Code (Act XIV of 1882), s. 13, Expl. II—Matter which might and ought to have been made ground of attack in former suit*—On a sale of land by plaintiff to defendant, part of the purchase-money was paid, and a mortgage was given by the defendant in plaintiff's favour for the balance of the purchase- [illegible] Plaintiff [illegible] 'ismissed [illegible] tiff now [illegible] framing [illegible] unpaid [illegible] s barred by Expl. II of s 13 of the Code of Civil Procedure. Plaintiff might have sued, in his former suit, on the basis of his lien for balance of unpaid purchase-money, and he ought to have done so to avoid the necessity for a second suit in the event of the mortgage being held invalid for want of registration. *Kameswar Pershad* v. *Rajkumari Ruttan Koer, I. L. R., 20 Calc., 85,* followed. AKATI KUNHI *v.* AYISSA BI (1903)

[I. L. R., 26 Mad., 645

23.—Matter not in issue as between defendants—*Civil Procedure Code (Act XIV of 1882), s 13—Previous suit in which same matter was in issue between plaintiff and the respective defendants, but not as between the defendants themselves—Suit by one of the then defendants to establish his priority over one of the other defendants—Maintainability*—In a former suit, the question whether each of the defendants had mort- [illegible]

and the rights of the parties not being dealt with further than by making a decree for sale subject to certain incumbrances, of which that of the fifth defendant therein was one The fifth defendant in that suit now sued, as plaintiff in the present suit, [illegible]

[I. L. R., 26 Mad., 337

24.—Mesne profits—*Civil Procedure Code (Act XIV of 1882), s. 13, Explns. II and III—Redemption suit—Decree in such suit, making no order as to mesne profits—Subsequent suit by plaintiff for surplus mesne profits accrued due prior to former suit*—In a redemption suit brought in 1894, the plaintiff prayed for possession of the

RES JUDICATA—*continued.*

6. MATTERS IN ISSUE—*continued.*

mortgaged property and for payment of such sum [illegible]

appealed. The plaintiff did not appeal, nor did he file objections to the decree, which was confirmed by the Appellate Court. In 1897 the plaintiff, having obtained possession of the land, filed this suit, in which (*inter alia*) he claimed to recover mesne profits which had accrued due prior to the former suit. *Held* that the claim was *res judicata*, and was barred. KACHU *v.* LAKSHMANSING (1900)

[I. L. R., 25 Bom., 115

25.————*Mortgage—Decree for redemption—Payment of the amount of decree of lower Court, and recovery of possession by mortgagors—Subsequent enhancement in appeal of amount ordered to be paid by decree—Subsequent suit by the mortgagee to recover profits of the mortgaged property for period between recovery of* [illegible]

date at which they obtained possession (March, 1894) and the date at which they paid the full amount [illegible]

26.—Omission to set up mortgage bond—*Civil Procedure Code, s. 13, Expl. II—Omission to set up mortgage bond as a defence in former suit—Subsequent suit on mortgage bond—Civil Procedure Code, s. 43—Relinquishment of part of cause of action.*—Where, to a suit by a mortgagee on a mortgage bond of certain property, a prior mortgagee of the same property is made a party, and omits to set up his prior charge and claim to have it redeemed,

RES JUDICATA—*continued.*

6. MATTERS IN ISSUE—*continued.*

a suit subsequently brought by him for that purpose is barred by Expl. II to s 13 of the Civil Procedure Code. In the same way, if, being a party in a suit [illegible] mits to claim [illegible] ge, he cannot [illegible] mortgage he [illegible] a mortgagee who has several mortgages on the same property treat them, with respect to the provisions of s 43 of the Civil Procedure Code, as separate causes of action, or must he bring one suit on all his mortgages? GOPAL v PIRTHI SINGH (1902)

[I. L. R., 24 All., 429 : s.c., L. R., 29 I. A., 118 ; 6 C. W. N., 889

27.—Relief not claimed in former suit—*Civil Procedure Code (Act XIV of 1882), s. 13, Expl. II.*—*A* sued *B* as his agent and trustee in possession of certain lands, complaning that *B* had been dealing with the lands as if he (*B*) were the owner, and had mortgaged them to *C*. *C* was made a defendant in the suit *B* pleaded that he was the owner of the land, and not merely agent of *A*. *C* also pleaded that *B* was owner, and he produced the mortgage-deed and stated that if he were paid his debt he would not dispute *A's* claim. The term in *C's* mortgage deed was one year, at the end of which, [illegible]

gage, alleging that, even though *B* might not be owner, *A* had allowed *B* to deal with the land and to hold himself out as owner, and that thus the mortgage was valid. Both the lower Courts held that the suit was *res judicata*, under Expl. II of s 13 of the Civil Procedure Code, on the ground that *C's* present claim might and ought to have been made a ground of defence in the former suit brought by *A*. *Held*, reversing the decisions of the lower Courts, that the suit was not barred, as no relief was asked or granted as against *C* in the former suit, though he was a party to it. RAMDAS *v.* VAZIRSAHEB (1901). I. L. R., 25 Bom., 589

28.—"Subjects in dispute"—*Civil Procedure Code (Act XIV of 1882), ss. 13 (Expl. II), 42, 43*—The phrase "the subjects in dispute," in s 42 of the Code of Civil Procedure, signifies the jural relation between the parties to the suit, for the determination of which the suit is brought The object of the section is to require the plaintiff to bring forward his whole case as to the matter of litigation on the question of right involved in the suit, and not to require him to unite all the causes of action which he may have against the defendant in respect of the *corpus* or object-matter of the suit. Though the subject of *res judicata* is dealt with more comprehensively in the present Code than in the former Code, yet ss. 42 and 43 are not exhaustive of the law of *res judicata*. That law has been the same under both the old and the new Codes, and it is substantially the same as the English law. The decision of the Privy Council in *Kameswar Pershad* v. *Rajkumari Ruttan, I. L. R., 20 Calc, 79,* explained. Neither of the decisions of the Privy [illegible]

[illegible] proposition that a plaintiff who seeks to redeem a specific mortgage or to eject on a specific lease, and fails in such suit because the mortgage or lease is not proved, is thereby precluded from seeking to redeem the same property or a portion thereof from another specific mortgage [illegible]

whether the transaction is sought to be established in different modes or by different means In a previous suit the present plaintiff, claiming as the legal representative of a deceased mortgagor, sued substantially the same defendants to redeem a usufructuary [illegible]

[illegible] that 14 out of the 50 *cawnies* had been usufructuarily mortgaged to them in 1853, and they claimed that these 14 *cawnies*, as well as the remaining 36, had been sold [illegible]

suit was not barred by s 43 or s. 13, Expl. II, of the Code of Civil Procedure. *Arunachalam Chetty* v. *Meyyappa Chetty I. L. R., 21 Mad., 91,* and *Rangasawmi Pillai* v. *Krishna Pillai, I. L. R., 22 Mad., 259,* discussed. *Guddappa* v *Tirkappa, I. L R, 25 Bom, 189,* dissented from. RAMASWAMI AYYAR *v.* VYTHINATHA AYYAR (1903)

[I. L. R., 26 Mad., 760

29.—Suit for rent—*Civil Procedure Code (Act XIV of 1882), s. 13—Khoti Settlement Act (Bom Act I of 1880), s. 33—Suit to recover thal (rent in kind) for 1898-99—Previous suit to recover thal for 1897-98.*—The plaintiff, a *khot*, sued to recover *thal* (rent in kind) from the defendants for the year 1898-99. He also claimed rent for the betel-nut trees growing on the land. The defence was that, under the *botkhat* (statement) prepared by the Settlement-officer under the Khoti Settlement Act (Bom. Act I of 1880), the plaintiff was not entitled to claim any rent in respect of the betel-nut trees. A previous suit (No. 718 of 1898) had been brought by the plaintiff against the defendants to recover thal for the year 1897-98 In [illegible]

RES JUDICATA—*continued.*

6. MATTERS IN ISSUE—*concluded.*

statement, but their application was refused. The only issue raised in the case was whether the *dbhávani* (estimated produce) was proved. The

or the produce of betel-nuts, may have been wrongly awarded could not alter the provisions of the law,

embodied in Expl. I to s. 13 of the Civil Procedure Code (Act XIV of 1882). VISHNU VASUDEV JUVEKAR *v.* RAMLING BHIKLING GURAV (1901) . . . . I. L. R., 26 Bom., 25

7. PARTIES

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES.

30.—Allegation of different titles—*Civil*

was barred by the provisions of s. 13 of the Civil Procedure Code (Act XIV of 1882). GUDDAPPA *v.* TIRKAPPA (1900) . I. L. R., 25 Bom., 189

31.—Parties all claiming under one party in former suit—*Decision in former suit—Parties in subsequent suit all claiming under one party only in former suit—Deeds, construction of—What passes under deed in absence of words reserving rights—Transfer of Property Act (IV*

RES JUDICATA—*continued.*

7. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES—*concluded.*

s.c., L. R., 30 I. A., 71 ;
7 C. W. N., 482

32.—Shebaits—*Civil Procedure Code (Act XIV of 1882), s. 13—Hindu idol or deity—Shebait.*—The decision in a suit brought by one *shebait* is binding on a succeeding *shebait.* TULSIDAS MAHANTA *v.* BEJOY KISHORE SHOME (1901)
[6 C. W. N., 178

(*b*) CO-DEFENDANTS.

34—*Civil Procedure Code (Act XIV of 1882), s. 13—Res judicata between co-defendants.*—In a suit for a declaration of title to certain property, when the Court makes a declaration in favour of the plaintiff as to a certain share of the property, and a declaration as to certain other shares in favour of some of the defendants, the latter declaration is not binding on the other defendants. RAJ NARAIN *v.* KHOBDARI RAI (1901) . . 5 C. W. N., 724

(*c*) DIFFERENT PARTIES.

35.—*Bengal Tenancy Act (VIII of 1885), s. 106—Civil Procedure Code (Act XIV of 1882), s. 13*

RES JUDICATA—*continued.*

7. PARTIES—*concluded.*

(c) DIFFERENT PARTIES—*concluded.*

—Plaintiffs initiated proceedings under s. 106 of the Bengal Tenancy Act, against the landlord and the defendants Nos. 2 to 9, who claimed to be rival tenants of the land, to have their names recorded as tenants in the Settlement proceedings. The Settlement-officer held that the plaintiffs were the tenants, and made an order in their favour. On appeal by defendants Nos. 2 to 9, and not by the landlords, the Special Judge reversed the decision and ordered that

decision of the Special Judge not having been a decision between the parties, *i.e.*, the tenants on the one hand and the landlord on the other, it could not operate as *res judicata* in the present suit. MOHUNT JAGANNATH RAMANUJ DAS *v.* CHANDRA KUMAR BOSE (1900) . . . . 5 C. W. N., 421

8. COMPETENT COURT.

(a) GENERAL CASES.

36.—**Previous suit in Munsif's Court**—*Civil Procedure Code (Act XIV of 1882), s. 13—Suit in Subordinate Court—Valuation of a suit for declaration as to membership of tarwad—Specific Relief Act (I of 1877), s. 42*—A suit was brought in the Court of a Subordinate Judge for a declaration that the plaintiffs and defendants therein had no community of interest, and were not members of a *tarwad* having joint property. The property of the *tarwad* was valued by plaintiffs at R3,000, and this was held to be a true valuation, but it appeared that the value of the plaintiffs' interest in it was R2,000 only. In a previous suit between the parties, which had been brought in the Court of a District Munsif it had been held that

this

did

of a

portion of the property, which was in the enjoyment of the defendants. *Held* that the suit was barred, both as *res judicata*, and by s. 42 of the Specific Relief Act. The value of a suit for declaration that certain persons are or are not members of a *tarwad* is the value of the share of the *tarwad* property which would be allotted to them if a partition were made by common consent. PANGA *v.* UNNIKUTTI (1900) . I. L. R., 24 Mad., 275

(b) SMALL CAUSE COURT CASES.

37.—*Civil Procedure Code (Act XIV of 1882), s 13—Denial of plaintiff's title in a suit for rent—Decree in favour of defendants—Subsequent suit by same plaintiff against same defendants for possession.*—In 1898 *A* sued *B*, *C*, *D* and *E* in a Munsif's Court to recover six years' rent alleged by *A* to be due in respect of certain land on a registered deed of lease *B*, *C* and *D* denied *A's* title, and pleaded that they were not liable for rent, and that

RES JUDICATA—*continued.*

8. COMPETENT COURT—*continued.*

(b) SMALL CAUSE COURT CASES—*concluded.*

the land belonged to and was in the possession of E

recovery of land, and a second appeal would lie from a decree passed in it. *Held* that the Court which had tried the former case was a Court competent to try the present suit, within the meaning of s. 13 of the Code of Civil Procedure. *Subbammal* v. *Huddleston, I. L. R., 17 Mad., 273,* and *Bhagwanbutti Chowdhrani* v. *Forbes, I. L. R., 28 Calc., 78,* followed. *Srirangachariar* v. *Ramasami Ayyangar, I L. R., 18 Mad., 189,* referred to. AHMED *v.* MOIDIN (1901) . I. L. R., 24 Mad., 444

(c) REVENUE COURTS.

38.—**Denial of relationship of landlord and tenant**—*Civil Procedure Code (Act XIV of 1882), s. 13—Bengal Tenancy Act (VIII of 1885),* ... *Ejectment.*—When there

res judicata in a subsequent suit in ejectment and for declaration of the title, brought in a Civil Court. DHARANI KANTA LAHIRI *v.* GADEE ALI KHAN (1902) . . . I. L. R., 30 Calc., 339; [s c., 7 C. W. N., 33

39.—**Ejectment**—*Act XII of 1881 (North-Western Provinces Rent Act), ss. 93, 95—Jurisdiction of Civil and Revenue Courts—Suit to eject*

...titled

...pancy-

...nant, a

...ed the

names

...lding.

...e Civil

...passer

...olding

a suit

could

not have been instituted in a Court of Revenue, and, further, that the decision of the Court of Revenue allowing mutation of names in the defendant's favour could not operate as *res judicata* in respect of the present suit. *Subarni* v. *Bhagwan Khan, I. L. R., 19 All., 101,* distinguished. *Sheo Narain Rai* v. *Parmeshar Rai, I. L. R., 15 All., 270; Dukhna Kuar* v. *Unkar Pande, I. L. R., 19 All.*

452, and *Kalian v Dassu Pande, I. L R 20 All, 529*, referred to BARU MAL v. NIADAR (1901) . [I. L. R., 23 All., 360

40. ———— . ———— Act XII of 1881 (North-Western Provinces Rent Act), ss 93, 95—Act XIX of 1873, s 102—Jurisdiction—Civil and Revenue Courts—Suit to eject, as a trespasser, a person who claimed to be entitled to the holding of a deceased occupancy-tenant.—Upon the death of an occupancy tenant, a person, who alleged that he was entitled to succeed to the deceased's occupancy holding, obtained from the revenue-authorities, by means of an application under s 102 of the North-Western Provinces Land-revenue Act, mutation of names in his favour, and also got into possession of the holding The *zamindars* thereupon brought a suit in a Civil Court for his ejectment, on the allegation that he was a mere trespasser, who had no right whatever to succeed to the holding of their late occupancy-tenant. *Held* that such suit was properly brought in a Civil Court and could not have been instituted in a Court of revenue, and the decision of the Revenue-authorities, allowing mutation of names in the defendant's favour, could not operate as *res judicata* in respect of such suit. *Subarni v Bhagwan Khan, I. L. R, 19 All, 101*, distinguished. NIADAR v. BARU MAL (1901) . . . . I. L. R, 24 All., 153

41.—Genuineness of document—*Civil Procedure Code, s. 13—Decision by a Court of Revenue, in a suit for rent, as to the genuineness of a document, no bar to the determination of such issue by a Civil Court*—In a suit for rent brought in a Court of Revenue, the plaintiff produced in support of his claim the counterpart of a lease alleged to have been executed by the defendant The defendant denied execution, but the Revenue Courts, both original and appellate, decided against him that the counterpart was genuine. The defendant then brought a suit in a Civil Court, asking for a declaration that the counterpart in question was not executed by him, and was not a genuine document *Held* that the decision of the Revenue Courts could not operate as *res judicata*, such Courts having no jurisdiction to try the subsequent suit, and s 13 of the Code of Civil Procedure being exhaustive on the subject of what constitutes a *res judicata*. *Gokul Mandar v Pudmanund Singh (1902), 6 C W. N., 825*, referred to *Rai Krishn Chand v. Mahadeo Singh, Weekly Notes, 1901, p. 49*, distinguished. GOMTI KUNWAR v GUDRI (1902) [I. L R., 25 All., 138

42.—Jurisdiction—*Decision of Revenue Court, effect of—Civil Procedure Code (Act XIV of 1882), s 13*—Under s. 13, Civil Procedure Code, a decree in a previous suit cannot be pleaded as *res judicata* in a subsequent suit, unless the Judge by whom it was made had jurisdiction to try and decide, not only the particular matter in issue, but also the subsequent suit itself in which the issue is

subsequently raised. In this respect this section goes beyond the law laid down in the *Duchess of Kingston's case (1776), 2 Smith's Leading Cases, 10th Ed, p. 713* GOPAL MONDUL v. PUDMANUND SINGH (1902) . . 6 C. W. N., 825: [s c, I. L. R., 29 Calc., 707; L. R., 29 I. A., 196

43.—Settlement Proceeding—*Record-of-rights—Bengal Tenancy Act (VIII of 1885), Ch. X, ss. 105, 106—Civil Procedure Code (Act XIV of 1882), s. 13—Settlement Proceeding—Entry of rent—Procedure.*—S 105 of the Bengal Tenancy Act lays down that, during the pendency of the draft publication, any person affected by an entry in the record may raise an "objection" with regard to it, which the Revenue Officer is to "receive" and "consider" and dispose of in a summary manner. From an order disposing of such an "objection" there would be no appeal and no second appeal, and the order cannot have the effect of *res judicata*. A "dispute" under s 106 is to be "heard" and "decided" by the Revenue Officer under the procedure laid down in the Code of Civil Procedure for the trial of suits, and is subject to appeal and second appeal; and an order disposing of such a "dispute" will have the effect of *res judicata*. *Dengu Kazi v Nobin Kishore Chowdhrain (1897), 1 C. W. N., 291*, considered and explained. KARBAN ALI v. JAFAR ALI (1901) . . . 5 C. W. N., 798

44.—Status of tenant and nature of holding—*Bengal Tenancy Act (VIII of 1885), ss 104, cl (2), 107—Civil Procedure Code (Act XIV of 1882), s. 13.*—During the preparation of a record-of-rights of an estate under s. 103 of the Bengal Tenancy Act by a Settlement Officer, the landlord put in a petition under s. 104, cl. (2), of the Act for settlement of rent of a certain tenant's holding The tenant, notwithstanding the fact that notice was served upon him, did not adduce any evidence, and the Settlement Officer decided that the tenant was an occupancy *raiyat*, and fixed a fair and equitable rent for the holding Against this decision of the Settlement Officer, no appeal was preferred to the Special Judge. Subsequently, a suit was brought in the Civil Court by the tenant to have the class to which he belonged and the nature of his holding, *i.e*, whether the rent was enhanceable or not, determined. The defence of the landlord was that, having regard to the decision of the Settlement Officer, the question could not be re-opened. *Held* that, under the provisions of s. 104, cl. (2), and s. 107 of the Bengal Tenancy Act, the decision of the Settlement Officer amounted to a decree, and the matters determined by that decision could only be re-opened on an appeal to the Special Judge. As no appeal was preferred, the decision became final, and the questions decided in that could not be re-opened in this suit. DURGA CHURN LAW v. HATEEM MANDAL (1901) . . I. L. R., 29 Calc., 252: [s.c, 6 C. W. N., 238

RES JUDICATA—*concluded.*

9. RELIEF NOT GRANTED.

45.—*Civil Procedure Code (Act XIV of 1882), s. 13, Expln. III—Application in execution for two reliefs—Order passed granting one relief and making no reference to the other—Subsequent application for the other relief; power of Court to grant.*—A decree awarded a plaintiff possession of land, together with mesne profits. Plaintiff subsequently applied, in execution, for delivery of the land, and for the mesne profits The Court passed an order on this application, directing plaintiff to be put into possession of the land, but making no reference whatever to the mesne profits. Plaintiff subsequently made another application for mesne profits, when it was contended that, inasmuch as the prayer for mesne profits had not been granted when the previous application was dealt with, it must be taken that the application for mesne profits had been refused, [illegible]

[I. L. R., 24 Mad., 681

RESPONDENT.

——assent of—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.
[5 C. W. N., 193

——death of—

See ABATEMENT OF SUIT—APPEALS.
[I. L. R., 23 All., 23
„ 26 Bom., 203

——objections by—

See APPEAL—OBJECTIONS BY RESPONDENT

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

RESTITUTION OF CONJUGAL RIGHTS.

See HINDU LAW—HUSBAND AND WIFE.
[I. L. R., 28 Calc, 751

See LIMITATION ACT, 1877, SCH. II, ART. 35. I. L. R., 25 Bom., 644

—*Husband and wife—Hindu law—Marriage—* [illegible]

Marriage—Proof of rites and ceremonies—In a suit for the restitution of conjugal rights, between

RESTITUTION OF CONJUGAL RIGHTS—*concluded.*

Hindus, the lower Courts having found that the defendant wife was of sufficient age to be fit to live with her husband as wife, it was *held* that the suit was maintainable, in spite of the fact that the wife was a minor, although in some cases it might be necessary to impose suitable terms on the husband. The Limitation Act is not intended to define or create causes of action, but only to prescribe the [illegible]

ceremonies necessary to constitute a legal marriage in the particular case were performed. The Court must find specifically what these rites and ceremonies are, and whether they were performed. Art. 35, [illegible]

s c., 5 C. W. N, 195

RESTRAINT.

See WRONGFUL RESTRAINT.

RESUMPTION.

See SERVICE TENURE.

EFFECT OF RESUMPTION.

—Effect on patta—*Bengal Act VIII of 1879, s. 10—Resumption of lands included in a patta—Re-settlement with grantor of patta—Liability for rent—Parties*—*Held* that, when lands are re-settled with the original holder or his heirs, s 10 of Ben. Act VIII of 1879 does not, on its true construction, interfere with the contractual rights of a subordinate holder. The respondent having a permanent *ganti* tenure, subject to a fixed rent for the whole of it, under a patta executed in 1867, the Government resumed lands comprised in the tenure, and settled in 1884 with the heirs of the respondent's grantor in respect thereof. In an action by the appellant, as purchaser of the resumed and [illegible]

2.—Enfranchisement—*Enfranchisement of inam service land in name of office holder—Hindu law—Effect of enfranchisement—Liability to partition*—Three items of land, numbered 5, 6 [illegible]

RESUMPTION—*concluded.*

EFFECT OF RESUMPTION—*concluded.*

second defendant, in March, 1889, established his right, as the heir to the late incumbent, to this office of *karnam*, and the lands were, in November, 1889, ordered to be delivered to *R*, and were actually delivered to him in December, 1889 Before the actual delivery, *R* applied that the lands might be registered and a title-deed be issued in his name, as the Government were taking steps to enfranchise service *inams* in the district, and the *Inam* Commissioner, in November, 1889, notified to *R* that his name was included in the register In January, 1890, second defendant's father, the eldest son of *R*, died; and in February, 1890, *R* resigned the office of *karnam* in favour of his grandson, second defendant, who was duly appointed by the Collector. Item No. 5 was enfranchised, and a title-deed issued to and in the name of *R* The *Inam* Commissioner, in 1891, passed an order that items 6 and 7 had been "resumed and fully assessed" *R* had died at a date prior to this, and second defendant was holding the office On a suit being instituted by plaintiff for partition *Held per* BHASHYAM AYYANGAR, J—That, when a personal *inam* is enfranchised by the imposition of a quit-rent, the resumption by Government simply consists of so much of the assessment or *melvaram* as is equal to the quit-rent, neither the land nor the assessment in excess of the quit-rent being resumed Similarly, the enfranchisement of a service *inam* does not operate as a resumption and fresh grant by Government subject to the payment of a quit-rent, any more than it is so in the case of the enfranchisement of a personal *inam* It stands on the same footing, so far as the family in which the village office is hereditary is concerned enfranchisement only converts the *inam* into ordinary property. *Narayana* v *Chengalammal*, *I L R*, *10 Mad*, *1*, followed *Venkata* v *Rama*, *I L R*, *8 Mad*, *249*, explained. *Dharnipragada* v *Kadambari*, *I L R*, *21 Mad*, *47*, and *Venkatarayadu* v. *Venkata Ramayya*, *I. L R*, *15 Mad*, *284*, dissented from *Per* MOORE, J—Even assuming item No 5 to be the self-acquisition of *R*, according to *Dharnipragada* v *Kadambari*, *I L R*, *21 Mad*, *47*, and *Venkatarayadu* v *Venkata Ramayya*, *I L R*, *15 Mad*, *284*, the plaintiff was entitled, as his son, to his share As to items 6 and 7, there was no enfranchisement and no fresh grant or title-deed in favour of second defendant. They were liable to partition, and it was unnecessary, therefore, to decide whether *Narayana* v *Chengalammal*, *I L R*, *10 Mad*, *1*, or *Dharnipragada* v. *Kadambari*, *I L R*, *21 Mad*, *47*, and *Venkatarayadu* v *Venkata Ramayya*, *I L R*, *15 Mad*, *284*, were correctly decided. *Venkata* v. *Rama*, *I. L. R*, *8 Mad*, *249*, explained. *Per Curiam*—That items 5, 6 and 7 were liable to partition. GUNNAIYAN v KAMAKCHI AYYAR (1902)

[I. L. R., 26 Mad., 339

RE-TRIAL.

See CRIMINAL PROCEDURE CODE, S. 437.

See CRIMINAL PROCEEDINGS.

[I. L. R., 28 Calc., 104

RE-TRIAL—*concluded.*

See MAGISTRATE—RE-TRIAL OF CASES.

See NEW TRIAL.

See RE-HEARING.

See SESSIONS JUDGE, JURISDICTION OF—

ORDER FOR RE-TRIAL ON APPEAL; [7 C. W. N., 301

POWERS ON REVISION. [I. L. R., 28 Calc., 63

RE-UNION.

See HINDU LAW—PARTITION—

REQUISITES FOR PARTITION; [I. L. R., 30 Calc., 738

EFFECT OF PARTITION. [I. L. R., 30 Calc., 725

REVENUE.

See LAND-REVENUE.

REVENUE COURT.

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY, OR OTHERWISE . . I. L. R., 24 Mad., 121

——jurisdiction of—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS.

See JURISDICTION OF REVENUE COURT.

See RENT, SUIT FOR.

[I. L. R., 28 Calc., 485

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

——suit in—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.

REVENUE-OFFICER.

See BENGAL TENANCY ACT, SS. 101 TO 103.

[I. L. R., 30 Calc., 339

REVENUE RECOVERY ACT (I OF 1890).

——s. 6—

See MADRAS REVENUE RECOVERY ACT, SS. 5, 25 AND 41.

[I. L. R., 26 Mad., 521

REVENUE SALES ACT BENGAL), 1859.

See ACT—1859—XI.

REVERSIONER.

See Hindu Law—

Alienation—Alienation by Widow;

Reversioners;

Widow—Power of Widow—

Power of Disposition or Alienation;

Decrees against Widow, as representing the Estate, or personally.

See Letters of Administration. [6 C. W. N., 912

See Limitation Act, 1877, Sch. II, Art. 141.

REVIEW.

See Civil Procedure Code, s. 244—Questions in Execution of Decree. [5 C. W. N., 627

See Limitation Act, 1877—

S 5 and Sch. II, Art. 173; [I. L. R., 28 Bom., 485

Sch. II, Art. 179—Period from which Limitation runs—Where there has been a Review.

See Minor—Representation of Minor in Suits . I. L. R., 29 Calc., 735

See Mortgage—Redemption—Right of Redemption . . 5 C. W. N., 83

See Public Demands Recovery Act (Ben. Act I of 1895), ss. 15, 19, 32 and 33 . I. L. R., 30 Calc., 619

Grounds for review—In granting a review, the Court should not travel beyond the grounds mentioned in the application for review. Purna Chandra Sarkar *v.* Nil Madhub Nandi (1901) [5 C. W. N., 485

REVISION—CIVIL CASES.

See Munsif . I. L. R., 24 Mad., 335

See Practice—Civil Cases—Vakil and Counsel . I. L. R., 30 Calc., 986

See Public Demands Recovery Act (Ben act I of 1895), ss. 15, 19, 32 and 33 . I. L. R., 30 Calc., 619

See Sale in Execution of Decree—Distribution of Sale-proceeds. [I. L. R., 29 Calc., 773

See Superintendence of High Court.

REVISION—CRIMINAL CASES.

See Complaint—Dismissal of Complaint—Effect of Dismissal. [I. L. R., 28 Calc., 102

See Joinder of Charges. [5 C. W. N., 866

See Jury—Withdrawal of Case from Jury . . . 5 C. W. N., 411

See Possession, Order of Criminal Court as to—

Likelihood of Breach of the Peace; I. L. R., 30 Calc., 112

Attachment of Property. [6 C. W. N., 882

See Reformatory Schools Act—

ss. 8, 9, 16; . 5 C. W. N., 210

ss. 8, 16. I. L. R., 28 Calc., 423

See Sessions Judge, Jurisdiction of. [I. L. R., 28 Calc., 63

1. GENERAL RULES FOR EXERCISE OF POWER.

1.—Accused not appealing—*Criminal Procedure Code (Act V of 1898), ss. 423, 439—High Court, power of, to deal with accused person not appealing—Conviction, setting aside of, of accused not appealing, while dealing with an appeal on behalf of persons appealing*—The High Court has power, under s. 439 of the Code of Criminal Procedure, in a proper case, to deal with the case of accused persons not appealing against their conviction, while ... the appeal preferred by some

2.—Criminal Procedure Code, Ch. XII (Disputes as to Immovable Property)—*Statute 24 & 25 Vic., cap. 104, s. 15—Criminal Procedure Code, ss. 145, 435, 439—Order of Magistrate in case of a dispute relating to immovable property—High Court's powers of revision.*—*Held* that the High Court cannot exercise revisional powers in respect of proceedings under Ch. XII of the Code of Criminal Procedure unless in a case where the Magistrate has acted without jurisdiction. *Doulat Koer* v. *Rameswari Koeri*

REVISION—CRIMINAL CASES—*continued.*

1. GENERAL RULES FOR EXERCISE OF POWER—*concluded.*

(1899), I. L R, 26 Calc, 625, followed. IN THE MATTER OF THE PETITION OF NATHU MAL (1902) [I. L. R., 24 All., 315

3.—Party having no right to present possession—*Criminal Procedure Code, s 145—No decision come to by Magistrate as to party in possession—Application for revision at in-* [illegible]

2 ACQUITTALS.

4.—*District Magistrate's discretion to move Local Government against acquittal—Effect of order of acquittal on other persons charged, but not sent up for trial—Criminal Procedure Code (Act* [illegible]

[illegible] the Local Government, he ordered the petitioners only, who had not been tried, to be placed on their trial. *Held* that the District Magistrate should, [illegible]

5.—*Acquittal of accused, effect of, with regard to others similarly charged—Revival of proceedings against absent accused—Indian Penal Code (Act XLV of 1860), ss. 147, 341, 379.*—Petitioners were charged, along with two others, with having committed certain offences under ss. 379,

REVISION—CRIMINAL CASES—*continued.*

2. ACQUITTALS—*concluded.*

341 and 147, Indian Penal Code; the latter, who were sent up by the police, were tried and acquitted, and the Magistrate remarked in his judgment that the case against the petitioners was not a true one. *Held* that, until this decision was set aside by higher authority, the petitioners could not be prosecuted; and the order of the Sessions Judge directing their prosecution was bad. *Panchu Singh v Umor Mahomed Sheikh (1899), 4 C. W. N., 846*, and *Bishun Das Ghosh v. King-Emperor (1902), 7 C. W. N., 493*, followed KEDAR NATH BISWAS v. ADHIN MANJI (1903). 7 C. W. N., 711

3 COMMITMENTS.

6.—*Criminal Procedure Code (Act V of 1898), ss. 209, 213, 215, 436—Order of discharge—Subsequent order of commitment—Revisional power of High Court*—Where a Sessions Judge, under s. 436, ordered the commitment of an accused who had previously been discharged under s. 209, Criminal Procedure Code, by the Deputy Magistrate, on evidence which was unreliable and insufficient: *Held* that the High Court had authority to set aside the order of commitment on the merits of the case, and that the order was bad and should be set aside. The High Court, in the exercise of its powers of revision, can, on the merits of a case, set aside an order of commitment passed by a District Magistrate or Sessions Judge under s. 436, Criminal Procedure Code, where such order of commitment setting aside a previous order of discharge is made on insufficient or unreliable evidence. PIRTHI CHAND LAL v. SAMPATIA (1903) [7 C. W. N., 327

4 DISCHARGE OF ACCUSED.

7.—*Criminal Procedure Code (Act V of 1898), ss 436, 410, 209—Preliminary inquiry—Improper discharge—Order for further inquiry or subsequent commitment to Sessions—Consideration of evidence on record*—At a preliminary inquiry, a Magistrate before committing an accused person to the Sessions Court under s. 210 of the Code of Criminal Procedure should have sufficient grounds for doing so, and among such grounds may properly be placed a consideration as to whether, on the evidence before him, a conviction will be arrived [illegible]

REVISION—CRIMINAL CASES—*continued.*

4. DISCHARGE OF ACCUSED—*concluded.*

the Code of Criminal Procedure, without considering the evidence on the record, which he thought he could not do without "prejudging the case, thus making it difficult for him to hear it with a jury:" *Held* that the Sessions Judge's order ... of the ... made ... as disc... the evidence before the Magistrate. HARBANS SINGH *v.* FAKIR DAS (1902)

[7 C. W. N., 77

8.—*Jurisdiction—Revisional jurisdiction of High Court—Criminal Procedure Code (Act V of 1898), ss. 423, 439—Presidency Magistrate—Discharge of accused person under s. 209 of Criminal Procedure Code (Act V of 1898)—Order of discharge set aside by High Court, and order made that accused be arrested and committed for trial at the Sessions of the High Court—Practice—Procedure.*—Under ss. 439 and 423 of the Criminal Procedure Code, the High Court has jurisdiction to set aside an order of discharge passed by a Presidency Magistrate, if such preliminary be necessary, and to direct that a person improperly discharged of an offence be arrested and forthwith committed for trial The fact that, by s 439 of the Criminal Procedure Code (Act V of 1898), the High Court in its revisional jurisdiction may exercise all the powers given to it as a Court of Appeal (by s. 423), except (see paragraph 4) the power of converting a finding of acquittal into one of conviction, seems to point to the conclusion that all other powers not expressly excluded may be exercised by the High Court as a Court of Revision. EMPEROR *v.* VARJIVANDAS (1902)

[I. L. R., 27 Bom., 84

5. VERDICT OF JURY, AND MISDIRECTION.

9.—*Trial by jury—Procedure—Delivery of verdict—Verdict, partial record of—Criminal Procedure Code (Act V of 1898), ss. 300, 301, 303—Prejudice—New trial.*—Where, after the delivery of an unanimous verdict of the jury, convicting the accused of the charge of rioting in connection with certain land and the crops thereon, possession of which was claimed by the complainant as well as by the accused, the foreman of the jury attempted to add that "the land and the crops are all theirs" (meaning that they belonged to the accused), but was stopped by the Sessions Judge on the ground that the verdict was quite clear in its terms, and it was therefore ... from them ... the jury at ... words the fore... were very m... the accused having been seriously prejudiced by the procedure adopted by the Sessions Judge, there should be a new trial. NARAYAN CHANGA *v.* EMPEROR (1902)

[I. L. R., 30 Calc., 485

REVISION—CRIMINAL CASES—*continued.*

6. MISCELLANEOUS CASES.

10.—Contempt of Court—*Criminal Procedure Code, ss. 439, 476—Power of High Court to revise an order under* ... under ... *exerci*... to set ... Revenu... Criminal Procedure; but such power should not be exercised where the Court below has arrived at a judicial opinion on evidence that there is ground for inquiring into an offence referred to in s. 195, merely because the High Court disagrees with that opinion. IN THE MATTER OF THE PETITION OF ALAMDAR HUSAIN (1901) . I. L. R., 23 All., 249

11.—————*Criminal Procedure Code (Act V of 1898), ss. 439, 476—Jurisdiction of High Court to interfere when a Court has taken action under s. 476 of the Criminal Procedure Code* —Where a Court has taken action under s. 476 of the Code of Criminal Procedure, the High Court, as a Court of Revision, has no power to interfere under s 439. The reasons for the decision in *Queen-Empress* v. *Srinivasulu Naidu, I. L. R., 21 Mad., 124,* are not applicable to the amended Code. ERANHOLI ATHAN *v.* KING-EMPEROR (F.B., 1902)

[I. L. R., 26 Mad., 98

12.—Dispute as to possession of immovable property—*Criminal Procedure Code, ss. 145 (5) and 435 (3)—Order of Magistrate on dispute as to possession of immovable property—Jurisdiction of High Court.*—The order to which finality is given under ss. 145 (5) and 435 (3) of the Code of Criminal Procedure must be an order which not only purports to be, but is in reality, an order under s. 145, and has been passed with jurisdiction. Where the Court has exceeded its jurisdiction in making the order, it is null and void, and the High Court, in the exercise of its revisional powers, is competent to interfere with it. *Hurbullubh Narain Singh* v. *Luchmeswar Prosad Singh (1898), I. L. R., 26 Calc, 188; In re* ...

having passed an order seemingly under s 118, added, as it were, as an appendix to this order:—"Bisu Ahir put in possession under s. 145, Code of Criminal Procedure"—it was *held* that this order, passed without any of the procedure prescribed by s. 145 being adopted, was more than an irregularity, and was an order passed without jurisdiction, and liable to revision by the High Court. *Mohesh Sowar* v. *Narain Bag (1900), I. L. R., 27 Calc., 981,* and *Sakor Dusadh* v. *Ram Pargash Singh (1903), 7 C. W. N., 174,* referred to. MAHADEO KUNWAR *v.* BISU (1903)

[I. L. R., 25 All., 537

REVISION—CRIMINAL CASES—*continued.*

6. MISCELLANEOUS CASES—*continued.*

13.—Notice to accused—*Criminal Procedure Code (Act V of 1898), ss. 435, 437—Petition by complainant for re-trial of accused after discharge —No notice to accused—Order by Sessions Judge, directing further inquiry—Revision petition to High Court—Jurisdiction—Necessity for notice before order passed to prejudice of accused.*— A person charged with having committed criminal breach of trust was discharged, whereupon the complainant petitioned the Sessions Judge, under s. 435 of the Code of Criminal Procedure, to direct a re-trial of the case Notice of the application was not given to the accused. The Sessions J

t

b

against that order: *Held* that it was competent to the High Court to revise the order; and that, without laying down a general rule that the

renders

must be

is case

r that

there was any reason why the general rule should

14.—Sanction for prosecution—*Practice—Criminal Procedure Code, s. 195—Sanction to prosecute—Application for sanction refused by Magistrate—Independent application subsequently*

remedy in the Court below.

CHUNNI LAL (1902) . I. L. R., 25 All., 126

15. ——— *Practice—Procedure—Sanction to prosecute—Stay of criminal proceedings pending disposal of civil suit—High Court—Criminal Procedure Code (Act V of 1898), ss. 439, 195,*

exercise

the Crimi

interfere

under s.

(Act V

person for the offences referred to in that section.

REVISION—CRIMINAL CASES—*concluded.*

6. MISCELLANEOUS CASES—*concluded.*

The High Court in this case refused to stay criminal proceedings directed by a subordinate Court under s 476 of the Criminal Procedure Code (Act V

16. ——— *Criminal Procedure Code (Act V of 1898), ss. 435, 439—Jurisdiction of High Court, under Criminal Procedure Code, to revise order according sanction which has been granted by a Civil Court.*—The High Court has no jurisdiction, under ss. 435 and 439 of the Code of Criminal Procedure, to revise an order passed by any Court other than a Criminal Court under cl. (*b*) or (*c*) of sub-s (*1*) of s. 195 of the Code of Criminal Procedure, according sanction to institute a prosecution; or an order passed under sub-s. (*6*) of s 195 revoking or refusing to revoke a sanction which has been given, or granting a sanction which has been refused. It may be open to the High Court, under s 622 of the Code of Civil Procedure, to revise such proceedings of a Civil Court, in cases which come within the terms of that section. IN RE CHENNANAGOUD (1902) . I. L. R., 26 Mad., 139

REVIVOR.

See LIMITATION ACT, 1877, SCH. II, ART. 180 . . I. L. R., 30 Calc., 979

——revival of criminal case—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

See DISCHARGE OF ACCUSED—REVIVAL OF PROCEEDINGS.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS . . . 6 C. W. N., 923

REVOCATION.

——of sanction—

See SANCTION FOR PROSECUTION—REVOCATION OF SANCTION.

——of Will—

See HINDU LAW—WILL—REVOCATION OF WILL.

RIGHT OF APPEAL.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MESNE PROFITS. [I. L. R., 25 Bom., 85

REVISION—CRIMINAL CASES—*continued.*

4 DISCHARGE OF ACCUSED—*concluded.*

the Code of Criminal Procedure, without considering

made on full consideration of the merits of the case, as disclosed by the evidence before the Magistrate. HARBANS SINGH *v.* FAKIR DAS (1902)

[7 C. W. N., 77

8.—*Jurisdiction—Revisional jurisdiction of High Court—Criminal Procedure Code (Act V of 1898), ss 423, 439—Presidency Magistrate—Discharge of accused person under s. 209 of Criminal Procedure Code (Act V of 1898)—Order of discharge set aside by High Court, and order made that accused be arrested and committed for trial at the Sessions of the High Court—Practice—Procedure.*—Under ss 439 and 423 of the Criminal Procedure Code, the High Court has jurisdiction to set aside an order of

one of conviction, seems to point to the conclusion that all other powers not expressly excluded may be exercised by the High Court as a Court of Revision. EMPEROR *v.* VARJIVANDAS (1902)

[I. L. R., 27 Bom., 84

5. VERDICT OF JURY, AND MISDIRECTION.

9.—*Trial by jury—Procedure—Delivery of verdict—Verdict, partial record of—Criminal*

by the accused, the foreman of the jury attempted to add that "the land and the crops are all theirs" (meaning that they belonged to the accused), but was stopped by the Sessions Judge on the ground that the verdict was quite clear in its terms, and it was therefore unnecessary to hear anything further from them: *Held* that it was undesirable to stop the jury at such a stage of the proceedings; that the words the foreman attempted to add to the verdict were very material; and that, the accused having been seriously prejudiced by the procedure adopted by the Sessions Judge, there should be a new trial. NARAYAN CHANGA *v.* EMPEROR (1902)

[I. L. R., 30 Calc., 485

REVISION—CRIMINAL CASES—*continued.*

6. MISCELLANEOUS CASES.

10.—**Contempt of Court**—*Criminal Procedure Code, ss. 439, 476—Power of High Court to revise an order under s. 476—Circumstances under which such power should or should not be exercised.*—The High Court has power, in revision, to set aside an order passed by a Civil, Criminal or Revenue Court under s. 476 of the Code of Criminal Procedure; but such power should not be exercised where the Court below has arrived at a

11. ———— *Criminal Procedure Code (Act V of 1898), ss. 439, 476—Jurisdiction of High Court to interfere when a Court has taken action under s. 476 of the Criminal Procedure Code.*—Where a Court has taken action under s. 476 of the Code of Criminal Procedure, the High Court, as a Court of Revision, has no power to interfere under s 439. The reasons for the decision in *Queen-Empress* v. *Srinivasulu Naidu, I. L. R., 21 Mad., 124,* are not applicable to the amended Code. ERANHOLI ATHAN *v.* KING-EMPEROR (F B, 1902)

[I. L. R., 26 Mad., 98

12.—**Dispute as to possession of immovable property**—*Criminal Procedure Code, ss. 145 (6) and 435 (3)—Order of Magistrate on dispute as to possession of immovable property—Jurisdiction of High Court.*—The order to which finality is given under ss. 145 (6) and 435 (3) of the Code of Criminal Procedure must be an order which not only purports to be, but is in reality, an order under s. 145, and has been passed with jurisdiction. Where the Court has exceeded its jurisdiction in making the order, it is null and void, and the High Court, in the exercise of its revisional powers, is competent to interfere with it. *Hurbullubh Narain Singh* v. *Luckmeswar Prosad Singh (1898), I. L. R., 26 Calc., 188; In re Pandurang Govind (1900), I. L. R., 24 Bom., 527;* and *Agra Bank* v. *Leishman (1894), I. L. R., 18 Mad., 41,* referred to. Where a Magistrate, under circumstances which would apparently have justified his taking action under s. 145 of the Code of Criminal Procedure, took action in fact under s. 107, and, having passed an order seemingly under s. 118, added, as it were, as an appendix to this order:—"Bisu Ahir put in possession under s. 145, Code of Criminal Procedure"—it was *held* that this order, passed without any of the procedure prescribed by s. 145 being adopted, was more than an irregularity, and was an order passed without jurisdiction, and liable to revision by the High Court. *Mohesh Sowar* v. *Narain Bag (1900), I. L. R., 27 Calc., 981,* and *Sakor Dusadh* v. *Ram Pargash Singh (1903), 7 C. W. N., 174,* referred to. MAHADEO KUNWAR *v.* BISU (1903)

[I. L. R., 25 All., 537

REVISION—CRIMINAL CASES—*continued.*

6. MISCELLANEOUS CASES—*continued.*

13.—Notice to accused—*Criminal Procedure Code (Act V of 1898), ss. 435, 437—Petition by complainant for re-trial of accused after discharge—No notice to accused—Order by Sessions Judge, directing further inquiry—Revision petition to High Court—Jurisdiction—Necessity for notice before order passed to prejudice of accused.*—A person charged with having committed criminal breach of trust was discharged, whereupon the complainant petitioned the Sessions Judge, under s. 435 of the Code of Criminal Procedure, to direct a re-trial of the case. Notice of the application was not given to the accused. The Sessions Judge, acting under s. 437, ordered a futher inquiry to be made. On a criminal revision petition being preferred by the accused in the High Court against that order: *Held* that it was competent to the High Court to revise the order; and that, without laying down a general rule that the omission to give notice of such an application renders an order under the section bad, the order must be set aside, as it had not been shown that in this case there was any difficulty in giving notice, or that there was any reason why the general rule should not be followed that an order should not be made to a man's prejudice without giving him an opportunity for being heard. ALAGIRISAMY NAIDU *v.* BALAKRISHNASAMI MUDALIAR (1902)
[I. L. R., 26 Mad., 41

14.—Sanction for prosecution—*Practice—Criminal Procedure Code, s. 195—Sanction to* [illegible]

15. ——— *Practice—Procedure—Sanction to prosecute—Stay of criminal proceedings pending disposal of civil suit—High Court—Criminal Procedure Code (Act V of 1898), ss. 439, 195, 4*[illegible]
exercise o[illegible]
the Crimi[illegible]
interfere [illegible]
under s. 476 of the Criminal Procedure Code (Act V of 1898), directing the prosecution of any person for the offences referred to in that section.

REVISION—CRIMINAL CASES—*concluded.*

6. MISCELLANEOUS CASES—*concluded.*

[illegible]

tion with which the criminal charges were made had been decided. IN RE BAL GANGADHAR TILAK (1902)
[I. L. R., 26 Bom., 785

16.——— *Criminal Procedure Code (Act V of 1898), ss. 435, 439—Jurisdiction of High Court, under Criminal Procedure Code, to revise order according sanction which has been granted by a Civil Court.*—The High Court has no jurisdiction, under ss. 435 and 439 of the Code of Criminal Procedure, to revise an order passed by any Court other than a Criminal Court under cl. (*b*) or (*c*) of sub-s. (*1*) of s. 195 of the Code of Criminal Procedure, according sanction to institute [illegible]

REVIVOR.

See LIMITATION ACT, 1877, SCH II, ART. 180 . . I. L. R., 30 Calc., 979

——revival of criminal case—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

See DISCHARGE OF ACCUSED—REVIVAL OF PROCEEDINGS.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS . . . 6 C. W. N., 923

REVOCATION.

——of sanction—

See SANCTION FOR PROSECUTION—REVOCATION OF SANCTION.

——of Will—

See HINDU LAW—WILL—REVOCATION OF WILL.

RIGHT OF APPEAL.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MESNE PROFITS.
[I. L. R., 25 Bom., 85

RIGHT OF OCCUPANCY.

——acquisition of—

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.
[6 C. W. N., 199

——limitation of suit to recover possession—

See BENGAL TENANCY ACT, SCH. III, ART. 3.

——transfer of—

See POSSESSION—SUITS FOR POSSESSION.
[7 C. W. N., 607

TRANSFER OF RIGHT.

1.—Landlord's consent—*Sale of occupan holding in execution of money-decree—Landlord's consent, effect of.*—A sale, in execution of a money-decree, of an occupancy holding not transferable by local custom or usage, is valid and effectual, if the sale is held with the consent of the landlord. In principle, there is no difference between the case of a voluntary sale made by the *raiyat* and an involuntary sale had by the Court, if such sale is consented to by the landlord ANANDA DAS *v.* RUTNAKAR PANDA (1903) . . . . . 7 C. W. N., 572

2.—Proof of local usage—*Occupancy holding—Local usage to transfer*—Where the question was whether an occupancy holding was transferable, and the lower Appellate Court found as follows: "There is abundant evidence on the record to show that such lands are actually sold in the locality, and the *kobalas* filed in this case support this fact:" *Held* that this did not amount to a finding of a local usage. DINO NATH GHOSH *v.* NOBIN CHUNDER GHOSE (1900) . . . 6 C. W. N., 181

3.————— *Occupancy-holding—Transferability—Local usage, proof of.*—A transfer of an occupancy-holding cannot be justified by local usage which is still "growing up" The usage should have fructuated into maturity. To establish a usage as to the transferability of ... [illegible]

that such transfers have been made with the knowledge and without the consent of the landlord, and that no successful objection to such transfer has been made by the landlord. *Edward Dalgliesh v. Sheikh Gozaffar Hossein (1898), 3 C. W. N., 21,* followed *Dino Nath Ghose v. Nobin Chunder Ghose (1900), 6 C. W. N., 181,* referred to. RAMHUBI SINGH *v.* JUBBAR ALI MEAH (1902)
[6 C. W. N., 861

RIGHT OF SUIT.

RIGHT OF SUIT—*continued.*

———

See ACT—1863—XX, s. 18
[I. L. R., 24 Mad., 219

See ASSIGNMENT OF CHOSE IN ACTION.
[I. L. R., 26 Mad., 264

See BENAMI TRANSACTION—

GENERAL CASES—SUIT TO RECOVER POSSESSION OF PROPERTY;
[I. L. R., 30 Calc, 265

CERTIFIED PURCHASERS—CIVIL PROCEDURE CODE, 1882, s. 317.

See BENGAL REGULATION VIII OF 1819, s. 9.
[7 C. W. N., 111

See CERTIFICATE OF ADMINISTRATION.

See CIVIL PROCEDURE CODE—

s. 244;
s. 257A.
[I. L. R., 25 Bom., 252

See COMPROMISE—

CONSTRUCTION, ETC, OF DEEDS OF COMPROMISE;
[7 C. W. N., 158

REMEDY ON NON-PERFORMANCE OF COMPROMISE . 5 C. W. N., 386

See CONTRIBUTION, SUIT FOR—

PAYMENT OF JOINT DEBT BY ONE DEBTOR; I. L. R., 26 Mad., 373

JOINT WRONG-DOERS
[5 C. W. N., 393

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT.
[7 C. W. N., 108

See DECLARATORY DECREE, SUIT FOR—ADOPTION . I. L. R., 30 Calc., 613

See HINDU LAW—

ALIENATION—ALIENATION BY WIDOW—SETTING ASIDE ALIENATIONS, AND WASTE.
[5 C. W. N., 445

REVERSIONERS.
[I. L. R., 29 Calc., 260

See JURISDICTION OF CIVIL COURT.

See MADRAS RENT RECOVERY ACT, ss. 15, 17 AND 18 . I. L. R., 25 Mad., 603

See MALICIOUS PROSECUTION.

See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS . I. L. R., 24 All., 361

See MORTGAGE—POWER OF SALE.
[I. L. R., 25 Mad., 108

RIGHT OF SUIT—*continued.*

See PARTIES—
PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING;
[5 C. W. N., 423

SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS. I. L. R., 30 Calc., 207

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.
[5 C. W. N., 383

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880).
[I. L. R., 29 Calc., 73

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880), s. 19.
[I. L. R., 29 Calc., 94

See RAILWAY COMPANY
[I. L. R., 27 Bom., 344

See RAILWAYS ACT, SS. 7, 10 AND 11.
[I. L. R., 25 Mad., 632

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See RENT, SUIT FOR.
[7 C. W. N., 720

See RESTITUTION OF CONJUGAL RIGHTS.
[I. L. R., 28 Calc., 37

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE.
[7 C. W. N., 552

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—PARTIES
[7 C. W. N., 377

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY . . . 5 C. W. N., 240

See SALE OF GOODS.
[I. L. R., 25 Mad., 580

See SPECIFIC RELIEF ACT, s. 9.
[6 C. W. N., 616

——after conviction of defendant—

See DAMAGES—SUITS FOR DAMAGES—TORT . . . 6 C. W. N., 915

——against witness—

See DEFAMATION.
[I. L. R., 28 Calc., 794

——by co-sharer landlord—

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—KABULIYATS . 7 C. W. N., 670

——by creditor—

See RECEIVER.
[I. L. R., 30 Calc., 937

RIGHT OF SUIT—*continued.*

——for compensation—

See LAND ACQUISITION ACT (I OF 1894), ss. 11, 18, 31 and 33.
[7 C. W. N., 538

——road and other cesses, sale for arrears of—

See PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT I OF 1895), ss. 10, 17, 21.
[I. L. R., 28 Calc., 813

——to compel registration—

See REGISTRATION ACT (III of 1877), ss 73 TO 77 . . I. L. R., 24 All., 402

——to enforce agreement in satisfaction of judgment-debt—

See CIVIL PROCEDURE CODE, s. 257A.
[6 C. W. N., 27

——to recover cess illegally levied—

See MADRAS LOCAL BOARDS ACT, SS. 57, 64 AND 149
[I. L. R., 24 Mad., 114

——to set aside sale in execution of certificate—

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895)
[I. L. R., 30 Calc., 619

1. INTEREST TO SUPPORT RIGHT.

1.—*Malabar law—Denial of uralan's title by his co-uralan—Suit by one of two uralans without consulting co-uralan—Maintainability of suit, co-uralan being impleaded as defendant*—One of two co-*uralans* had for a considerable time denied the title of the other *uralan*. The latter brought a suit

2. CHARITIES AND TRUSTS

2.—*Civil Procedure Code, s. 539—Suit for a declaration that certain property is endowed property*—S. 539 of the Code of Civil Procedure pre-supposes the existence of a trust for the administration of which it is necessary to make provision. That section cannot apply to a suit in which the object of the plaintiff is to obtain a declaration that certain property is endowed property, the fact of endowment being denied on the other side. JAMAL-UDDIN *v.* MUJTABA HUSAIN (1903)
[I. L. R., 25 All., 631

RIGHT OF SUIT—*continued.*

3. DECREES.

3.—Suit to set aside decree—*Civil Procedure Code (Act XIV of 1882), s. 244—Separate suit to set aside decree and sale—Jurisdiction—Fraud—Evidence Act (I of 1872), s. 44*—A suit to set aside a decree and the sale in execution thereof, and to recover the property sold, is maintainable,

Court in a different district. It may not be competent to the Court to set aside

Thakoor v. *Bhujhun Jha (1874), 22 W. R., 213,* referred to. *Abdul Mazumdar* v. *Mohamed Gazi (1894), I. L. R., 21 Calc, 605; Pran Nath Roy* v. *Mohesh Chandra Moitra (1897), I. L. R., 24 Calc. 546,* and *Srimati Nistarini Dasi* v. *Rai Nundo Lal Bose (1899), 3 C. W. N., 670,* followed. KEDAR NATH MUKERJEE *v.* PROSONNA KUMAR CHATTERJEE (1901) . . 5 C. W. N., 559

4. ———— *Decree ex parte—Execution sale—Fraud—Civil Procedure Code (Act XIV of 1882), s. 108—Effect of order rejecting previous application to set aside the decree, where the plaintiff had not appealed from such order.*—The defendants sued the plaintiff for arrears

The plaintiff then sued to set aside the decree and the sale in execution, on the ground that he had no interest in the land, in respect of which the arrears of rent were alleged to be due, and the decree and sale had been obtained by false returns of summons and of processes in execution, and were fraudulent and void The defendant objected that

4. FRAUD.

5.—*Decree, exparte—Sale in execution of ex parte decree—Rejection of applications to set aside decree and sale in execution—Civil Procedure Code (Act XIV of 1882), ss. 13, 108, 311—Subsequent suit to set aside decree and sale on ground of fraud—Omission to appeal from orders of rejection.*—In a suit to set aside an *ex parte* decree and a sale in execution of such decree, as illegal, fraudulent and collusive, the allegations made in the plaint were clearly an attack, not on the regularity

RIGHT OF SUIT—*continued.*

4. FRAUD—*concluded.*

not have been determined on applications under those sections. KHAGENDRA NATH MAHATA *v.* PRAN NATH ROY (1902)

[I. L. R., 29 Calc., 395: s.c., 6 C. W. N., 473; L. R., 29 I. A., 99

6.—*Decree obtained by fraud, setting aside of*—

ficiary brought an administration suit, which sought incidentally to set aside certain leases, which the executors of the estate had granted to themselves, of lands situated without the jurisdiction of the Original Side of the High Court: *Held* that the suit was not a suit for land, and that the

5. INJURY TO ENJOYMENT OF PROPERTY.

7.—*Tenants-in-common, rights of, against each other—Trespass—Exclusion from common property.*—Laying a drain in land, and the incidental temporary interference with the soil necessary for that purpose, cannot be regarded as an ouster or destruction or an act of waste, and will not entitle a tenant-in-common of the land to maintain an action

RIGHT OF SUIT—*continued.*

5. INJURY TO ENJOYMENT OF PROPERTY—*concluded.*

against another tenant-in-common. MOHANCHAND NEMCHAND GUJAR *v.* ISAKBHAI TANAJI (1900) [I. L. R., 25 Bom., 248

6 MORTGAGE

8.—*Transfer of Property Act (IV of 1882), s. 93—Decree for redemption—Omission to exe-*

7. OBSTRUCTION OF PUBLIC HIGHWAY.

9.—*Public way, obstruction of—Damage peculiar to plaintiff—Special damage*—An action for obstructing a public way is not maintainable if no damage peculiar to the plaintiff is proved. Mere

8. POSSESSION, SUITS FOR.

9 PRE-EMPTION.

11.—*Compromise of suit for pre-emption, by means of which property is transferred—Suit for pre-emption, based on decree in such suit*—*Held* that no suit for pre-emption will lie, the basis of which is a decree for pre-emption in another suit. ABDUR RAZZAQ *v.* MUMTAZ HUSAIN (1903) [I. L. R., 25 All., 334

RIGHT OF SUIT—*concluded.*

10. SALE IN EXECUTION OF DECREE.

12.—Recovery of purchase-money—*Civil Procedure Code (Act XIV of 1882), s. 315—Execution sale—Absence of interest of judgment-debtor—Suit by purchaser, to recover purchase-money—Right of suit—Cause of action*—A pur-

7 C. W. N., 105

13.—Suit for confirmation of prior sale—*Decree transferred to Collector for execution—Sale held by Collector, but afterwards set aside—Purchase by one joint decree-holder in his own name—Suit by auction-purchaser to have the sale confirmed*—Muthara Das and Gappu Lal held a joint decree for money against Jamna Prasad. Mathura Das applied in his own name for execution of the joint decree, and certain property of the

PRASAD (1903) . . I. L. R., 25 All., 355

RIGHT OF WAY.

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL. [6 C. W. N., 31

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC.

See WRONGFUL RESTRAINT. [5 C. W. N., 432

—*Right of private way, suit for—Special damage, proof of, whether necessary*—In a suit where a right of way is claimed, which is not a right

RIGHT OF WAY—*concluded.*

of way by the public but a private right of way and an easement or right by prescription, the question as to whether or not there has been proof of special damage is immaterial. BAIJ NATH SINGH *v.* TETAI CHOWDHRY (1901) . 6 C. W. N., 197

RIGHT TO APPEAR.

See MOOKTEAR . 7 C. W. N., 524

See MURDER—APPOINTMENT AND APPEARANCE.

See PRACTICE—CIVIL CASES—

COUNSEL;

VAKIL AND COUNSEL.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [7 C. W. N., 843

RIGHT TO USE OF WATER.

See EASEMENT. [I. L. R., 30 Calc., 1077

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 28 Calc., 693

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC. 5 C. W. N. 67

See RAILWAYS ACT, ss. 7, 10 AND 11. [I. L. R., 25 Mad., 632

1.—*Riparian owners—Irrigation—Relative rights of upper and lower proprietors on the banks of a stream based on custom and prescription—Prescription—Custom—Injunction—Dams, construction of—*[illegible]

[illegible]

purpose of irrigating their agricultural land, by constructing dams every year during the Rainy season at a specified place, but allowing surplus water to run out by the sides of the dams. They

[illegible]

...they were entitled to the reliefs claimed, and that the injunction decreed in their favour was not unwarranted by law nor vitiated by vagueness and indefiniteness. *Debi Pershad Singh v. Joynath Singh (1897), I. L. R., 24 Calc., 865* distinguished. *Held, also,* that, the plaintiffs having applied for permission, under s. 30 of the Civil Procedure Code, to sue on behalf of all parties having the same interest in the suit, and the permission having been given in fact and notices issued accordingly, the mere fact that the order granting the permission was not recorded in the order sheet does not vitiate the proceedings *Dhunput Singh v. Paresh Nath Singh (1893), I. L. R., 21 Calc., 180,* followed. KALU KHABIR *v.* JAN MEAH (1901) I. L. R., 29 Calc., 100

2.—*Easement—Prescription—Prescriptive right to the use of water—Storage of water in another's tank for the purposes of irrigation—Presumption of right from long enjoyment*—[illegible]

[illegible]

openings and channels, for irrigating their lands. *Held* that a presumption arose that this enjoyment had an origin, conferring a right to the use of the water. *Ramessur Persad Narain Sing v. Koonj* [illegible]

[illegible]

(1839), 5 M. & W., 203; *Birmingham, Dudley and District Banking Co. v Ross (1888), L. R., 3 Ch. D.*, 295; *Wood v. Waud (1849), 3 Exch.*, 748; [illegible]

[illegible]

RIOTING.

See CRIMINAL PROCEDURE CODE, s. 437. [5 C. W. N., 72

See KIDNAPPING . 6 C. W. N., 208

See POLICE ACT (V OF 1861), ss. 17, 19. [I. L. R., 28 Calc., 411

See PRIVATE DEFENCE, RIGHT OF [I. L. R., 24 All., 143

See UNLAWFUL ASSEMBLY.

See WARRANT OF ATTACHMENT [I. L. R., 29 Calc., 244

—— giving provocation with intent to commit—

See RELIGION, OFFENCES RELATING TO. [I. L. R., 26 Mad., 554

1.—Landholder's responsibility—*Owner or occupier of land on which riot takes place, liability of—Agent—Manager—Acts of commission as well as omission—Knowledge—Penal Code (Act XLV of 1860), s. 154*—The accused was the sole propr[illegible] ing loss of [illegible] accused's [illegible] or suppress [illegible] stood close by, while the riot was going on, after

RIOTING—*continued.*

which he absconded. The accused, who had no knowledge that a riot was likely to be committed, was convicted under s 154 of the Penal Code, and fined. *Held* (RAMPINI and PRATT, *JJ.*) that a landlord is liable, under s 154 of the Penal Code, for the acts of commission as well as omission, not only of himself, but of his agent or manager. Knowledge, on the part of the owner or occupier of the land, of the acts or intentions of the agent, is not an essential element of an offence under s. 154 of the Penal Code, and he may be convicted under that section, although he may be in entire ignorance of the acts of his agent or manager. RAMPINI, *J.*—There seems to be no ground for holding that s. 154 is intended in order to punish the landlord where his agent has not rendered himself liable to the criminal law, and that, when the agent has done so, then his liability is at an end. On the contrary, the provisions of the section impose on non-resident landholders and their agents the duty of maintaining the public peace and preventing unlawful assembly and riots on their estates, and render the former liable for any dereliction in the dis-

C. W. N., 691; *Queen-Empress* v. *Hurnath Roy (1865), 3 W. R., Cr., 54; In the matter of Radha*

charge of neglect assumes that the agent is not directly concerned in the commission of the offence. If he is so concerned, it ceases to be neglect—it is a

ZEAMUDDIN AHMED *v.* QUEEN-EMPRESS (1901)
[I. L. R., 28 Calc., 504;
s.c., 6 C. W. N., 771

persons concerned, but to others. Where such a

the law constituting the offences, as also to other circumstances of the case, that the prosecution was

RIOTING—*concluded.*

stale and ill-advised, and should be discontinued. ESHAK MEAH *v.* EMPEROR (1902)
[7 C. W. N., 245

4.—Right of private defence—*Act XLV of 1860 (Indian Penal Code), s. 147—Riot—Act XLV of 1860, ss. 96 et seqq*—Of two parties, each of which claimed title to certain trees, one party went to cut down the trees and went armed with *lathis*, apparently with the intention of resisting anticipated opposition on the part of the other claimants. The other party

RIPARIAN PROPRIETORS.

See MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876), s. 4
[I. L. R., 25 Bom., 395

See RIGHT TO USE OF WATER.
[I. L. R., 29 Calc., 100

RISK NOTE.

See RAILWAYS ACT (IX OF 1890), s. 72.
[I. L. R., 30 Calc., 257

RIVER.

——changing its course—

See JURISDICTION—SUITS FOR LAND—RENT . . I. L. R., 23 All., 282

ROAD-CESS ACT.

See BENGAL CESS ACT (BENGAL ACT IX OF 1880).

ROAD-CESS PAPERS.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS.

ROBBERY.

—*Penal Code (Act XLV of 1860), ss. 390, 391—Dacoity—Hurt caused to persons, not for the purpose of committing theft—"For that*

ROBBERY—*concluded.*

end," meaning of — Splitting up of graver offence into smaller offences, in order to give himself

been committed at the same time as a perfectly independent act, it does not amount to robbery, as defined in s. 390, Indian Penal Code. OTARUDDI MANJHI *v.* KAFILUDDI MANJHI (1900)
[5 C. W. N., 372

RULE TO SHOW CAUSE.

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE.

See PROBATE — OPPOSITION TO, AND REVOCATION OF, GRANT.
[5 C. W. N., 377, 383

RULES MADE UNDER ACTS.

——Act XXIV of 1839, rules under—
See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL
[I. L. R., 26 Mad., 266

— Act XXIV of 1839, rules 20 and 31 of Agency, rules under—*Ganjam and Vizagapatam Agency Courts Act (XXIV of 1839)—Validity of Agency Rules Nos. XX and XXXI, passed under the Act — Application to High Court to direct Agent to review his decision — Maintainability* —In a suit in the Court of the Senior Assistant Agent to the Governor, in Vizagapatam, a decree was passed, in favour of the plaintiff, for possession of certain villages On ... 's decree was ... petition in the ... it might be ... petition was ... Rules, which ... the Agent on appeals from decrees of his subordinates shall be ... ecial ... t, as ... was ... unds ... *ultra* ... the ... the ... and not to the High Court. *Held* that Rule No. XX is not *ultra vires*; and that Rule No. XXXI has no application to a case of this nature. *Maharaja of Jeypore* v. *Papayyamma, I L. R, 23 Mad, 329,* referred to. MAHARAJAH OF JEYPORE *v.* JAMMANADHORA (1901) . . I. L. R., 24 Mad., 345

RULES MADE UNDER ACTS—*concluded.*

——Act XI of 1846, rule 35 of rules made under s. 3—

See HIGH COURT, JURISDICTION OF — BOMBAY—CRIMINAL.
[I. L. R., 25 Bom., 667

——Act XV of 1882; rules made under s. 9—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—RE-HEARING . I. L. R., 27 Bom., 563

——Bankruptcy Act (English) of 1883; rule 230 made under, does not apply to India—

See INSOLVENT ACT (11 & 12 VICT., c. 21), s 40 . I. L. R., 26 Bom., 623

——Ben. Act IX of 1880—

See BENGAL CESS ACT (BEN ACT IX OF 1880) . I. L. R., 28 Calc., 637

—Bengal Tenancy Act (VIII of 1885), s. 189; rule 3 in Ch. I of rules made under — *Notice to quit, service of — Suit for ejectment against more than one tenant*—In a suit for ejectment against the under-*raiyats*, the notice to quit, when addressed to more persons than one, should be made by proclamation and beat of drum, according to Rule 3 of Ch. I of the rules made by the Government of Bengal, dated the 21st December, 1885. TAMASHA BIBI *v.* MATHURA NATH BHOWMIK (1901)
[I. L. R., 28 Calc., 590: s.c., 6 C. W. N., 67

——Court-fees Act—
See COURT-FEES ACT (VII OF 1870), ss. 28, 30 . . . 6 C. W. N., 785

——Legal Practitioners Act (XVIII of 1879), s. 27—

See PLEADER—REMUNERATION.
[7 C. W. N., 300

——Legal Practitioners Act (XVIII of 1879), rules 31 and 35 of rules made under, for Madras—

See PLEADER—REMUNERATION.
[I. L. R., 26 Mad., 654

——Railways Act—

See RAILWAY COMPANY.
[I. L. R., 23 All., 367

——Scheduled Districts Act (XIV of 1874); rules 2 and 11 of Kumaon rules of 27th July, 1894—

See LEGAL PRACTITIONERS ACT, ss. 6 AND 8 . . . I. L. R., 24 All., 348

——Stamp Act, 1899; rule 16 of Rules of 17th February, 1899—

See STAMP ACT, 1899, SCH. I, ART 1
[I. L. R., 23 All., 21

RULES OF BOARD OF REVENUE.

—Darkhast rules—

See GRANT—POWER TO GRANT
[I. L. R., 26 Mad., 742

RULES OF HIGH COURT, BOMBAY.

—rule 577—

See SPECIFIC RELIEF ACT, s 45
[I. L. R., 27 Bom., 307

RULES OF HIGH COURT, CALCUTTA.

—Belchambers, rule 71—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s 622
[7 C. W. N., 843

—Belchambers, rule 605, is *intra vires*—

See INTEREST—MISCELLANEOUS CASES—MORTGAGE . . 6 C. W. N., 769

—Belchambers, rules 615, 617—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTIONS OF LAW.
[6 C. W. N., 41

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR . I. L. R., 28 Calc., 272

—rules of Appellate Side, Rule II, Ch. III, Column 1—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL
[I. L. R., 29 Calc., 498

—rules made under s. 287 of the Code of Civil Procedure—

See SALE IN EXECUTION OF DECREE—IMMOVABLE PROPERTY.
[5 C. W. N., 497

RULES OF PRESIDENCY SMALL CAUSE COURT, MADRAS.

—Rule 428 of the Rules of Procedure of the Presidency Small Cause Court is not *ultra vires* MUHAMMAD KHUMARALI *v* RANGA RAO (1901)
[I. L. R., 24 Mad., 654

RYOT.

See RAIYAT

S

SALARY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY.

SALE.

See CERTIFICATE OF SALE.

See MORTGAGE—

POWER OF SALE.

SALE OF MORTGAGED PROPERTY.

See PARTITION—MISCELLANEOUS CASES.
[5 C. W. N., 128

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

See REGISTRAR OF HIGH COURT—SALE BY REGISTRAR.

See RE-SALE

—effect of misdescription of property—

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR I. L. R., 29 Calc., 420

—invalid—

See VENDOR AND PURCHASER—INVALID SALES.

—irregularity in—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE - IRREGULARITY.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

—of adulterated food—

See CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899), s 495.
[I. L. R., 30 Calc., 843

—of occupancy-holding—

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . . 7 C. W. N., 572

—of stamp—

See COURT-FEES ACT (VII OF 1870), s. 34.
[I. L. R., 30 Calc., 921

—setting aside—

See CIVIL PROCEDURE CODE, s 244—QUESTIONS IN EXECUTION OF DECREE.
[6 C. W. N., 279, 283

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT . . . 5 C. W. N., 343

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880).
[I. L. R., 29 Calc., 73

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880)—
ss 8, 10, 12; 5 C. W. N., 86
s. 19 . I. L. R., 29 Calc., 94

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE

SALE—*concluded*

——**with right of re-purchase**—

See VENDOR AND PURCHASER—MISCELLANEOUS CASES . **6 C. W. N., 192**

SALE FOR ARREARS OF CESSES.

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT I OF 1895), ss. 10, 17 AND 21. **[I. L. R., 28 Calc., 813**

SALE FOR ARREARS OF RENT.

See BENGAL REGULATION VIII OF 1819, s 9 . . . . **7 C. W. N., 111**

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT **7 C. W. N., 203**

See MADRAS RENT RECOVERY ACT.

1. UNDER-TENURES, SALE OF.

1.—*Execution of decree—Bengal Rent Act (Bengal Act VIII of 1869), ss. 59, 60, 64—Decree for arrears of rent against Hindu heiress—Rent accrued due after death of full owner—What*

sale. The liability for rent ought to be regarded as her personal liability, and ought not to be held as attaching to the reversion unless the landlords proceeded to bring the tenure to sale under the special provisions of the Rent law. JIBAN KRISHNA ROY *v.* BROJO LAL SEN (1903)

[I. L. R., 30 Calc., 550 : s.c., 7 C. W. N., 425 : L. R., 30 I. A., 81

SALE FOR ARREARS OF RENT—*continued.*

2. EFFECT OF SALE.

Jogul Kishore (1881), I. L. R., 7 Calc., 357, and

limitation is determined by the provisions of s. 167 of the Bengal Tenancy Act, s. 7 of the Limitation Act cannot have any application, and the minor is not entitled to any fresh period of limitation. *Girija Nath Roy Bahadur v. Patani Bibee (1889), I. L. R., 17 Calc., 263,* referred to. The purchaser of the interest of a judgment-debtor is his representative for the purpose of execution proceedings. *Ishan Chunder Sarkar v. Beni Madhab Sarkar (1896), I. L. R., 24 Calc., 62,* referred to. AKHOY KUMAR SOOR *v.* BEJOY CHAND MOHATAP (1902)

[I. L. R., 29 Calc., 813

3. INCUMBRANCES.

3.—Defective application—*Bengal Tenancy Act (VIII of 1885), s. 167—Application to avoid an incumbrance, mentioning a wrong person as the incumbrancer—Another application, after the period of limitation, for amending the previous application; effect of—Collector's power to amend such application.*—An application to avoid an incumbrance under s. 167 of the Bengal Tenancy Act was made by an auction-purchaser within one year from the date on which he had notice of the incumbrance, mentioning therein a wrong person as the incumbrancer. After the period of limitation, another

SALE FOR ARREARS OF RENT—*continued*.

3. INCUMBRANCES—*continued*.

application was made by him, to amend the previous application by substituting the name of the real incumbrancer, which was allowed [illegible] *Held* that [illegible]

[illegible]

had notice of the [illegible] date on which the purchaser [illegible] made limitation. the incumbrance, was barred by NRITYA GOPAL HAZRA *v.* GOLAK RASOOL (1900) I. L. R., 28 Calc., 180

4.—**Notice of annulment**—*Bengal Tenancy Act (VIII of 1885), s 167—Annulment of incumbrance, notice for—Notice, contents of—Notice, joint, to several persons*—A notice to annul an incumbrance under s 167 of the Bengal Tenancy Act is not bad, although it does not specify the particulars of the land held by the tenant or the rent payable by him Such a notice, if addressed to several tenants jointly, is not bad if it is served in accordance with the prescribed rules JOGABUNDHU MAJUMDAR *v* RASHO MOHAN DASSYA (1900) [5 C. W. N., 272

5 ———————— *Bengal Tenancy Act (VIII of 1885), s 167—Notice to annul incumbrance—Jurisdiction to issue such notice by a Sub-Divisional Officer not specially authorized by Local Government—Collector—Bengal Tenancy Act, s. 3, cl (16)*.—A Sub-Divisional Officer not specially appointed by the Local Government to discharge the functions of a "Collector" under s 167 of the Bengal Tenancy Act has no power to receive an application, nor has he jurisdiction to issue notice, annulling an incumbrance, under that section. MOHABUT SINGH *v.* UMARIL FATIMA (1900) [I. L. R., 28 Calc., 66

6.—**Tenants' mortgage**—*Bengal Tenancy Act (VIII of 1885), s 65—Sale of a holding in execution of a decree for rent—Charge—Mortgagee, suit by, to enforce mortgage—Transfer of Property Act (IV of 1882), s. 101*.—Where, in execution of a decree for arrears of rent, a raiyati holding was sold, and purchased by the landlord, and the plaintiff, a mortgagee of the raiyati holding, whose mortgage was not annulled, brought a suit to enforce the mortgage: *Held* that the mortgagee was entitled to enforce the mortgage on payment of the money due under the rent-decree *Also*, that the landlord, when he made the purchase in execution of the rent-decree, might be taken to have become absolutely entitled to the property, and it followed from s. 101, Transfer of Property Act, that the landlord's charge for rent, which was for his benefit, continued to subsist after his purchase. *Also*, that the plaintiff (mortgagee) might be regarded as a second mortgagee. MEHERUNNESA *v.* SHAM SUNDAR BHUYIA (1902) [6 C. W. N., 834

7.—**Tenant's sub-lessee**—*Bengal Tenancy Act (VIII of 1885), s 167—Landlord and under-raiyat—Sub-lease given by a tenant without the landlord's consent—In a suit for khas possession by a landlord on purchase of a holding sold for arrears of rent, whether necessary for the landlord to avoid the incumbrance so created—Bengal Tenancy Act, ss 22 (1) and 85 (1)*.—In a suit brought by the plaintiff (landlord) to recover khas possession of a holding on the allegation that he had purchased it at a sale held in execution of a dec[illegible] arrears of rent obtained [illegible]

[illegible]

inasmuch as the sub-letting [illegible] Tenancy Act; [illegible] provisions of registered instrument, and was otherwise than by a consent, it was invalid as against him [s. 85(1) of the Bengal Tenancy Act], and therefore it was not necessary for him to follow the procedure prescribed by s. 167 of the Bengal Tenancy Act. The rights under such an under-raiyati lease are not protected by sub-s. (1) of s 22 of the Act. PEARY MOHUN MOOKERJEE *v.* BADUL CHANDRA BAGDI (1900) [I. L. R., 26 Calc., 205; s.c., 5 C. W. N., 310

4 RIGHTS AND LIABILITIES OF PURCHASERS.

8.—**Liability for rent**—*Bengal Tenancy Act (VIII of 1885), ss. 65, 195 (e)—Patni Regulation (VIII of 1819), s. 17—Contribution—Decree for rent for a period anterior to sale*.—There is no conflict between s 65 of the Bengal Tenancy Act and s. 17 (5) of the *Patni* Regulation. Antecedent balances may be mere personal debts, which cannot be summarily recovered under the procedure prescribed by the *Patni* Regulation, but they may be also a charge on the *taluk*, and the *taluk* may be sold subject to them Where the purchaser of a *patni taluk* paid off a decree for rent obtained against the old tenant for a period anterior to that of the rent-decree in execution of which the tenure was sold: *Held* that the purchaser was not entitled to contribution from the old tenant against whom the rent-decree was obtained. *Maharani Dasya v. Harendra Lal Rai (1895), 1 C. W. N., 438*, followed. PEARY MOHAN MUKHOPADHYA *v.* SREERAM CHANDRA BOSE (1902) 6 C. W. N., 704

9. ———————— *Sale in execution of decree for arrears—Liability of purchaser for rent for a period anterior to sale—Notification of sale—Bengal Tenancy Act (VIII of 1885), s. 65*.—Where a tenure or holding was sold in execution of a decree for rent, with a notice that it was saddled with liability for arrears of rent for a period anterior to the date of sale: *Held* that the purchaser was liable for the rent for such period. *Alim v. Satis Chandra Chakravarti (1896), I. L. R., 24 Calc., 37*, referred to *Faez Rahaman v Ram Sukh Bajpai (1893), I. L. R., 21 Calc., 169*, distinguished. HARADHAN CHATTORAJ *v.* KARTIK CHANDRA CHATTOPADHYA (1902) 6 C. W. N., 677

SALE FOR ARREARS OF RENT—*continued.*

4. RIGHTS AND LIABILITIES OF PURCHASERS—*concluded.*

10. ——————— *Sale notification, statement of annual rent of a tenure in—Deduction for bhadran mahakup—Liability of purchaser.*—The object of a sale notification is to make known to intending purchasers the rent for which they would be liable if they bought the property under sale. Where an application for execution of a decree for arrears of rent, and the sale notification, and the sale certificate, stated a certain amount as the annual rent payable, out of which a certain sum was kept in abeyance as *bhadran mahakup*, and the balance was stated as the net annual rent: *Held* that the purchaser was entitled to the deduction of the amount stated in the sale proclamation on account of *bhadran mahakup*. SHARIAT MONDUL *v.* SURJA KANT ACHARJA BAHADUR (1903) . 7 C. W. N., 388

5. SURPLUS PROCEEDS OF SALE

11.—*Right of suit by an unregistered tenant for surplus sale-proceeds*—Where, in execution of a decree for arrears of rent, the tenure was sold, and an unregistered tenant who was a purchaser of a share of the tenure after the date of the decree brought a suit for recovery of his share of the surplus sale-proceeds: *Held* that the suit was maintainable. MATANGINI CHAUDHURANI *v.* SREENATH DAS (1903)
[7 C. W. N., 552

6 SETTING ASIDE SALE.

(*a*) GENERAL CASES.

12.—Mortgagee—*Civil Procedure Code (as amended by Act V of 1894), s 310A—Immoveable property—Sale—Mortgagee—A mortgagee of a tenure sold in execution of a decree for arrears of* [illegible]

[illegible] execution of a decree for arrears of rent due in respect of it is entitled to make an application under s. 310A of the Code of Civil Procedure, as being a "person whose immovable property has been sold," [illegible]

13.—Under-raiyat—*Civil Procedure Code (as amended by Act V of 1894), s 310A—Immoveable Property—Sale—Whether an under-raiyat is entitled to make an application under that section*—An [illegible]

[I. L. R., 30 Calc., 455

(*b*) RE-SALE.

14—*Rent Recovery Act (Madras Act VIII of 1865), ss 33, 39—Sale of distrained property—Bid*

SALE FOR ARREARS OF RENT—*concluded.*

6. SETTING ASIDE SALE—*concluded.*

(*b*) RE-SALE—*concluded.*

for one item sufficient to meet arrears of rent—Failure by bidder to complete purchase—Re-sale of item with others—Legality of sale—Satisfaction of arrears—A landholder distrained the property of a [illegible]

to the amount of the arrear had been made for a portion of the property, the claim of the landholder [illegible]

holder's proper remedy lay in taking proceedings against the defaulting purchaser: *Held* that the contention could not be upheld. An arrear of rent is only satisfied by a sale when the amount bid is paid, till when the debt subsists. *Held, further,* that notice of the second sale was not necessary under s. 39 of the Rent Recovery Act (Madras), 1865 SUBRAHMANIA AYYAR *v.* RANGAPPA KALAKKA THOLA UDAYAR (1900) I. L. R., 24 Mad., 307

SALE FOR ARREARS OF REVENUE.

See MADRAS REVENUE RECOVERY ACT (MAD. ACT II OF 1864).

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
[I. L. R., 25 All., 371

——suit to set aside—

See COURT-FEES ACT (VII OF 1870), SCH. II, ART. 17, CL. 3 . 6 C. W. N., 157

1. RIGHT TO SALE

1—*Revenue Sale Law (Act XI of 1859), sale under—Kists fixed by the Board of Revenue—Default of payment of one kist—Proprietor of estate,*

SALE FOR ARREARS OF REVENUE —*continued.*

1. RIGHT TO SALE—*concluded.*

if entitled to pay the whole demand on the date fixed for the last kist—An estate was sold for arrears of a few rupees, which amount was in arrear on the 12th January of a certain year, the date fixed by the Board of Revenue for one of the *kists* for the payment of revenue. It was contended that the proprietor was entitled to make the payment [illegible] March [illegible] and [illegible] payn[illegible] plain[illegible] one year on the 28th of March, and the Revenue-[illegible] entitled to pay the whole demand of [illegible] that the authorities had every right to sell the estate KALI PROSUNNO BOSE *v.* KRISHNA CHANDRA (1903)

[7 C. W. N., 570

2. INCUMBRANCES

ACT XI OF 1859.

2.—*Act XI of 1859, ss 13, 14, 28, 29, 37, 54—Share of estate, sale of—Mokurrari lease—Rights of purchaser of share of estate—Merger*—The sale of a share of an estate for arrears of revenue, under the provisions of Act XI of 1859, does not affect, wholly or in part, a valid *mokurrari* lease of lands comprised in the estate, notwithstanding the fact that the lease is held by some of the defaulting proprietors of the share sold, having a fractional proprietary interest therein *Kasinath Koowar v. Bankubehary Chowdhry (1869), 3 B. L. R. (A. C.), 446,* and *Madhub Chunder Chowdhry v. Promotho Nath Roy (1873), 20 W. R., 264,* referred to AFZUL HOSSEIN *v.* RAJBUNS SAHAI (1903)

[I. L. R., 30 Calc., 1071

3.—*Lease of land—Revenue Sale Law (Act XI of 1859), s 37, cl. 4—'Permanent building'*—The word 'lease,' in cl. *Fourthly* of s 37 of Act XI of 1859, does not mean a lease from the *zamindar* only. KIRON CHUNDER ROY *v.* NAIMUDDI TALUKDAR (1903) . . . I. L. R., 30 Calc., 498

3. PURCHASERS, RIGHTS AND LIABILITIES OF.

ACT XI OF 1859, s. 54

4.—*Meaning of the words "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners"*—The words "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners", in s. 54 of Act XI of 1859, mean that the purchaser shall not acquire any rights not possessed by the previous owner or owners at some time or another, and shall acquire no more than what was the property of the previous owner or owners. They do not mean any right not possessed by the previous owner or owners at the date of the sale. ANNODA PROSAD GHOSE *v.* RAJENDRA KUMAR GHOSE (1901)

[I. L. R., 28 Calc., 223;
s.c., 6 C. W. N., 375

SALE FOR ARREARS OF REVENUE —*continued.*

4 DEPOSIT TO STAY SALE.

5.—*Act XI of 1859, s. 9—Act I of 1845—Mortgagee—Part-proprietor—Mortgage lien—Transfer of Property Act (IV of 1882), s 72—Cesses—Personal decree—Contract Act (IX of 1872), s. 70—Misjoinder—Civil Procedure Code (Act XIV of 1882), s. 578.*—A mortgagee of a share of an estate, who was also a part-proprietor, deposited in the Collectorate revenue and cesses payable by the defaulting mortgagor to save the property from being sold *Held* that, on general principles of justice, equity and good conscience, the mortgagee was entitled to have the amount paid by him on account of revenue added to the amount of the original lien. *Augender Chunder Ghose v. Sreemutty Kaminee Dossee (1867), 11 Moo. I. A. 241,* relied upon. *Kisnu Ram Das v. Mozaffer Hosain Shaha (1887), I. L. R., 14 Calc., 809,* distinguished. *Held, also,* that the mortgagee was entitled to a personal decree against the mortgagor for the amount paid on account of cesses, regard being had to s. 70 of the Contract Act (IX of 1872) *Smith v. Dinonath Mookerjee (1885), I. L. R. 12 Calc., 213,* referred to. UPENDRA CHANDRA MITTER *v.* TARA PROSANNA MUKERJEE (1903). . I. L. R., 30 Calc., 794;

[s.c., 7 C. W. N., 609

5 SETTING ASIDE SALE.

(a) IRREGULARITY.

6.—Description of property sold—*Revenue Sale Law (Act XI of 1859), ss. 6, 33 Sale of the residue of an estate—Sale notification—Inadequacy of price*—Where a notification of sale under Act XI of 1859 described the property to be sold thus:—"According to Act XI of 1859, the joint share excepting the separate share (is to be sold). Save and except these, all other shares are exempted from sale. *Held* that, inasmuch as the law contemplates that the specification should be such as to inform intending purchasers what may be the precise property that is to be sold, the notification was wholly insufficient under the law. *Annada Charan Mukhuti v. Kishori Mohan Rai (1892) 2 C. W. N., 479,* followed. Where the property was sold at an inadequate price, and the sale notification was bad: *Held* that a Court of Justice may reasonably and legitimately infer that it was due to this irregularity that the property was sold at an inadequate price HEM CHANDRA CHOWDHRY *v* SARAT KAMINI DASYA (1902) . . . . . 6 C. W. N., 526

7.—Notice—*Sale—Revenue—Suit—Act XI of 1859, ss 5, 6, 7, 33—Bengal Act VII of 1868, s. 8—Certificate of sale—Onus of proof—Notice—Irregularity and illegality in form and service—Bengal Cess Act (Ben. Act IX of 1880), s. 62—Evidence Act (I of 1872), s. 114, Ill. (e)—Presumption—Ben Reg. VIII of 1819 ss. 8, 14.*—In a suit to set aside a sale for arrears of revenue, the *onus* of proving that there has been

SALE FOR ARREARS OF REVENUE —*continued.*

5. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*concluded.*

irregularity or illegality in the preparation, service or posting of notice rests on the person who seeks to have the sale set aside. *Ashanullah Khan Bahadur* v *Trilochan Bagchi (1886), I. L. R.,* 13 *Calc.,* 197 ; and *Hurro Doyal Roy Chowdhry* v. *Mahomed Gazi Chowdhry (1891), I. L. R., 19 Calc.,* 699, distinguished. The fact that the inadequacy of price fetched at the sale was the result of the irregularity complained of may be either established by direct evidence or inferred, when such inference is reasonable, from the nature of the irregularity and the extent of the inadequacy of price. In a sale for arrears of revenue, after the certificate of [illegible]

Lala Mobarak Lal v *The Secretary of State for India in Council (1885), I. L. R., 11 Calc.,* 200 ; and *Bal Mokoond Lall* v. *Jirju Dhun Roy (1882), I. L. R., 9 Calc.,* 271, distinguished. Omission to serve notice under s. 7 of Act XI of 1859 can hardly render a sale for arrears of revenue liable to be annulled under s 33 of that Act, especially after issue of the certificate of title to the purchaser. *Gobind Chundra Gangopadhya* v. *Sherajunnissa Bibi (1882), 13 C L R.,* 1, and *Mahomed Azhar* v. *Raj Chunder Roy (1893), I L R., 21 Calc.,* 354, referred to. SHEORUTTON SINGH v NET LOLL SAHU (1902)
[I. L. R., 30 Calc., 1 ;
s.c., 6 C. W. N., 688

8. —————— *Act XI of 1859, ss. 3, 5, 6*— [illegible]

[illegible] *appeal to Commissioner.*—The expression "current year," in s 5 of Act XI of 1859 is to be understood as referring to the year in which the latest [illegible]

VII of 1868 from receiving evidence to prove that the notice under s. 6 of Act XI of 1859 was not served 30 days before the sale. The presumption arising under that section has reference only to the due service and posting of the notification. *Bal Mokoond Lall* v. *Jirjadhun Roy (1882), I. L. R., 9 Calc.,* 271, and *Lala Mobarak Lal* v. *The Secretary of State for India in Council (1885), I. L. R., 11 Calc.,* 200, followed. It is not open to a plaintiff in such a suit to make objection to the sale on a ground which had not been declared and specified in an appeal to the Commissioner *Gobind Lal Roy* v. *Ramjanam Misser (1893), I L. R., 21 Calc.,* 70, followed. JAHNNOVI CHOWDHARANI v. SECRETARY OF STATE FOR INDIA IN COUNCIL (1902)
[7 C. W. N., 377

SALE FOR ARREARS OF REVENUE —*concluded.*

6. SETTING ASIDE SALE—*concluded.*

(*b*) PARTIES.

9.—*Act XI of 1859, s. 33—Secretary of State, if a necessary party—Patnidar's right to sue.*—In an action to set aside the sale of an estate for arrears of revenue, the Secretary of State is not a [illegible]

— FOR ARREARS OF ROAD-CESS.

See SALE FOR ARREARS OF CESSES

SALE IN EXECUTION OF CERTIFICATE UNDER BENGAL ACT VII OF 1880.

See PUBLIC DEMANDS RECOVERY ACT, 1880 . . 6 C. W. N., 302

SALE IN EXECUTION OF CERTIFICATE UNDER BENGAL ACT I OF 1895.

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895), ss. 15, 19, 32 AND 33. I. L. R., 30 Calc., 619

— what passes at such a sale—

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880), ss. 2, ETC. [I. L. R., 29 Calc., 537

SALE IN EXECUTION OF DECREE.

SALE IN EXECUTION OF DECREE—*continued*

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.
[I. L. R., 25 Bom., 418
„ 23 All., 476

See BENAMI TRANSACTION—CERTIFIED PURCHASERS—CIVIL PROCEDURE CODE, s 317. 5 C. W. N., 341
[I. L. R., 23 All., 34

See BENGAL TENANCY ACT—
s. 13, . 7 C. W. N., 388, 591
ss 65 AND 188.
[I. L. R., 29 Calc., 219

See HINDU LAW—WIDOW—DECREES AGAINST WIDOW, AS REPRESENTING THE ESTATE, OR PERSONALLY.
[7 C. W. N., 619

See LIMITATION ACT, 1877, SCH II, ART. 134 . . I. L. R., 25 Mad., 99

See LIS PENDENS. I. L. R., 23 All., 60
[„ 27 Bom., 266

See RIGHT OF SUIT—
FRAUD; . I. L. R., 29 Calc., 395
SALE IN EXECUTION OF DECREE.

—— mortgaged property—

See MORTGAGE—SALE OF MORTGAGED PROPERTY.

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.
[I. L. R., 29 Calc., 1

—— setting aside sale—

See CIVIL PROCEDURE CODE, s 244—QUESTIONS IN EXECUTION OF DECREE;
[6 C. W. N., 279, 283
PARTIES TO SUIT.
[6 C. W. N., 127

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.
[6 C. W. N., 663

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.
[I. L. R., 29 Calc., 1

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[6 C. W. N., 836

SALE IN EXECUTION OF DECREE—*continued*.

1. IMMOVABLE PROPERTY.

1.—*Civil Procedure Code (Act XIV of 1882), ss. 235, 247, 284, 287—Execution of decree, application for sale of tenure in—Incumbrance, notification of existence of—Incumbrance—Arrears of rent due in respect of the tenure—Rules made by the High Court—Omission to state existence of arrears of rent, effect of—Costs*

be brought to sale, the rules made by the High Court under the provisions of s 287 of the Code cast on him the duty of notifying the existence of arrears of rent due to him in respect of the property which he seeks to bring to sale. An arrear of rent due in respect of the property sought to be sold is to be regarded as one of the matters to be notified, as being

Nursing Narain Singh v. *Roghoobur Singh (1884), I. L. R, 10 Calc, 609*, and *Kasturi* v.

property hypothecated for the rents liable for the

2. ERRORS IN DESCRIPTION OF PROPERTY SOLD.

2.—**Certificate of sale**—*Certificate of sale not conclusive as to the property sold at execution sale—Civil Procedure Code (Act XIV of 1882), ss. 316, 317.*—A decree on a mortgage directed that the whole interest of five brothers in the mortgaged house should be sold. The proclamation of sale stated also that the whole interest in the house was to be sold. The sale took place, and the plaintiff was the purchaser. By a mistake, however, on the part of

SALE IN EXECUTION OF DECREE—*continued.*

2. ERRORS IN DESCRIPTION OF PROPERTY SOLD—*continued.*

the officer in charge of the sale, the memorandum of sale, the certificate of sale and the receipt of possession passed by the plaintiff omitted to mention the names of four of the brothers, and erroneously stated that the interest only of one of them had been sold. The defendant subsequently obtained a money-decree against some of the other brothers, and, in execution, sold their interest in the house, purchased it himself, and took possession of a part of the house. The plaintiff thereupon brought this suit to eject him.

entitled to a decree The certificate of sale was not conclusive as to the property which had been purchased by the plaintiff The property offered for sale and bid for by the plaintiff was the property ordered to be sold and proclaimed for sale. What was sold to the plaintiff was the interest mentioned in the Court's order and proclamation, and the sale of that property became absolute by the order which confirmed the sale. BALVANT BABAJI DHONDGE *v.* HIRACHAND GULABCHAND GUJAR (1903)

[I. L. R., 27 Bom., 334

3.—Misdescription of area—*Sale in execution of a decree obtained outside the jurisdiction of the Original Side of the High Court—Misdescription of area of property sold—Deficiency in quantity of land—Compensation, suit for—Abatement of rent.*— in execution o of the Origina a suit agains of part of the purchase-money, on account of a deficiency in the actual area of land purchased, as compared with the area stated in the sale proclamation, and for abatement of rent in respect of such deficiency. It was alleged that the decree-holder made false and fraudulent allegations in respect of the area of the property in the sale proclamation, but there was no finding by the lower Court as to this, nor was there any finding that the plaintiff sustained any loss, and there was no condition in the sale proceedings as to compensation for ... was ... o pay ... and ... used *Held* that, although there was a deficiency in area, the auction-purchaser was not entitled to compensation, as he had failed to prove he had sustained loss by misdescription in the sale proclamation, but he was entitled to an abatement of rent for such deficiency. *Kissory Mohan Roy v. Kali Charan*

SALE IN EXECUTION OF DECREE—*continued.*

2. ERRORS IN DESCRIPTION OF PROPERTY SOLD—*concluded.*

Abdullah Khan v. Abdur Rahman Beg (1896), I. L. R., 18 All., 322, dissented from. DOYAL KRISHNA NASKAR *v.* AMRITA LAL DAS (1901)

[I. L. R., 29 Calc., 370

4.—Misdescription of property—*Saleable interest of the judgment-debtor—Small Cause Court; jurisdiction of, in suits to set aside sale—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art 21—Rights of a purchaser at an execution sale.*—A suit to set aside a sale, either in whole or in part, is not a suit of a Small Cause Court nature, but is one excluded from the jurisdiction of the Small Cause Court by Art. 21 of Sch. II to Act IX of 1887. *Prasanna Kumar Khan v. Uma Churn Hazra (1896), 1 C. W. N., 140,* distinguished When the judgment-debtor has a saleable interest, however small, the purchaser at an execution sale purchases at his own risk, and, there being no warranty that the property will answer to the description given of it, the purchaser is entitled to no relief if the property does not correspond to the description *Sundara Gopalan v. Venkatavaradar Ayyangar (1893), I. L. R., 17 Mad., 228,* followed. SONARAM DASS *v.* MOHIRAM DASS (1900)

[I. L. R., 28 Calc., 235

3. JOINT PROPERTY.

5.—*Decree on mortgage of joint family property ... the father alone—Sale of joint family ... of Property Act), s. 99.*—In execution ... for sale, upon a mortgage executed by the father

... perty exempted from sale in exe... *...ngh (1883), ... Muhammad ... 5 All., 353; ... Ayyangar ... Ally Khan ... , 116; Ram ... , I. L. R., 2*

SALE IN EXECUTION OF DECREE—*continued.*

3. JOINT PROPERTY—*concluded.*

All., 828; Derry v. Peek (1889), L. R., 14 A. C.,

[I. L. R., 23 All., 355

6.—*Hindu law—Mitakshara—Joint Hindu family Mortgage of joint family property executed by the father—Decree and sale of mortgaged property—Suit by sons to recover their shares—Act IV of 1882 (Transfer of Property Act), s. 85—Effect of sale*—Where property belonging to a joint Hindu family has been sold by auction, in execution of a decree obtained upon a

decree against their father was obtained, provided that the mortgagee had at the time of suit notice of their interests in the property. But their suit must

ground that they were not made parties to the original suit. *Kaunsilla v. Chandar Sen (1900), I. L. R., 22 All., 377,* overruled *Hargu Lal*

R., 19 All., 1895), I. L. Mahton v. Calc., 18;

RAM (F B, 1902) . I. L. R., 25 All., 214

4. MORTGAGED PROPERTY.

7.—Administration suit—*Mortgage suit—Residuary legatee, mortgage by—Administration, subsequent, of testator's estate - Receiver of testator's estate pending administration—Receiver, sale by, of mortgaged property before completion of administration*—Defendant mortgaged certain properties, which he took under the will of his father, to the plaintiff. Plaintiff brought this suit on the mortgage, and obtained a decree and an order for sale by the Registrar. In the meantime a suit for administration of the testator's property had been filed, and an order had been made in that suit, appointing a

SALE IN EXECUTION OF DECREE—*continued.*

4. MORTGAGED PROPERTY—*continued*

pending, and administration of the testator's estate had not been completed. *Held* that the sale could not be held by the Receiver before the completion of the administration Till such completion of

8.—Civil Procedure Code, ss. 310A and 311.—Ss 310A and 311 of the Code of Civil Procedure apply to sales of mortgaged property in execution of mortgage decrees *Kedar Nath Raut v. Kali Churn Ram, I. L. R., 25 Calc., 703,*

approved MALLIKARJUNADU SETTI *v.* LINGAMURTI PANTULU (F B, 1902) . I. L. R., 25 Mad., 244

9.—Limitation—*Mortgage—Payment—Prior mortgagee—Subsequent mortgagee—Limitation Act (XV of 1877), Sch. II, Art. 11—Civil Procedure Code (Act XIV of 1882), s. 335, rejection of objection under*—If an objection under s 335 of the Civil Procedure Code (Act XIV of 1882) is

10.—Sale for arrears of revenue—*Mortgage—Execution of decree—Sale of mortgaged property for arrears of revenue—Purchase of the same by the mortgagor—Realization of surplus sale-proceeds by mortgagees—Subsequent application to sell the same property under a decree on the mortgage.* A mortgagor, by allowing the revenue payable in respect of the mortgaged property to fall into arrears, caused such property to be sold at auction by the Revenue-authorities, and it was purchased by the mortgagor *benami* in the name of a third person. The mortgagees, believing that this purchase was a genuine purchase, applied for and obtained payment out of Court of the surplus realized by the sale over and above the revenue due. Subsequently the mortgagees discovered the true nature of the purchase made by the mortgagor at the Revenue Court sale, and sought to have the same property, then in the hands of a transferee from the

SALE IN EXECUTION OF DECREE—*continued.*

4. MORTGAGED PROPERTY—*concluded.*

mortgagor's successor in title, sold in execution of a decree upon their mortgage: *Held* that there was no legal objection to the property being sold in execution of the mortgage decree. *Otter* v. *Lord Vaux (1856), 6 De Gex, M and G., 638,* and *Raghunath Sahay Singh* v *Lalji Singh (1895), I. L. R., 23 Calc., 397,* referred to. GANGA SAHAI v. TULSHI RAM (1903). I. L. R., 25 All., 371

11.—Transfer of Property Act—*Act IV of 1882, s. 89—Order absolute for sale—Notice to defendant of application—Practice*—Notice need not be given to a defendant before an order absolute for sale is made under s. 89 of the Transfer of Property Act. KRISHNA AYYAR v. MUTHUSAMI AYYAR (1901) . . I. L. R., 25 Mad., 506

12. ——— ——— — *Act IV of 1882, ss. 67, 85, 99—Mortgage—Sale under a decree of equity of redemption—Rights of purchaser, the decree having become final*—On the 22nd of March, 1881, one Nathu Ram mortgaged certain property, with possession. On the 9th of May, 1881, the mortgagees leased the mortgaged property to Nathu Ram, who, as security for the rent due from him, further pledged his equity of redemption. The original mortgagees died The rent due under the lease fell into arrears; and the successor in title of the mortgagees instituted a suit against the mortgagor, to recover the amount due to him for arrears of rent by sale of the equity of redemption of the property On the 27th of November, 1889, a decree for sale was passed, and on the 31st of March, 1890, an appeal against the decree for sale was rejected. The property was accordingly sold by virtue of the decree for sale, and was purchased by the successor in title of the motgagees on the 20th of April, 1891. The sons of Nathu Ram thereupon brought a suit, claiming proprietary possession of the ... of redemption was not contemplated by the Transfer of Property Act, yet, inasmuch as the sale had taken place ur... not at t... *Kazim*... *Tara C*... *All., 325,* referred to. PARMANAND v. DAULAT RAM (1902) . . . . I. L. R., 24 All., 549

5. PURCHASERS, TITLE OF.

13.—*Civil Procedure Code, s. 316—Sale in execution—Time from which the auction-purchaser's title accrues*—When immovable property is sold in execution of a decree, the title of the auction-purchaser to mesne profits or possession does not accrue until the sale has been confirmed. *Gobind Ram* v. *Tulsi Ram, Weekly Notes, 1887, p. 217,* and *Prem Chand Paul* v. *Purnima Dassi (1888), I. L. R., 15 Calc., 546,* followed. AMIR KAZIM v. DARBARI MAL (1902) . . . I. L. R., 24 All., 475

6 DISTRIBUTION OF SALE-PROCEEDS.

14.—*Civil Procedure Code, s. 295—Execution of decree—Rateable distribution of assets—Hindu law—Joint Hindu family—Effect of attachment of joint family property in keeping alive the remedy of the decree-holder.*—A decree-holder who ... Hindu ... his ... in a ... ntly to the attachment, but before sale, the judgment-debtor died. Upon the rights and interests of the ... Civil Procedure to be allowed to share rateably in the assets realized by the sale. Their applications were granted; but, on appeal, in a suit by the decree-holder who had attached in the life-time of the judgment- ... only ... do it, ... e not ... share ... a ttachment. *Suraj Bansi Koer* v. *Sheo Proshad Singh (1878-79), L. R., 6 I. A., 88; Deendyal Lal* v. *Jugdeep Narain Singh (1877), L. R., 4 I. A., 247; Maniklal Vensilal* v. *Lakha (1880), I. L. R., 4 Bom., 429; Gangadin* v. *Kushali (1885), I. L. R.,* ... (1896), ... *Edalji* ... Bom., ... ISHORE ... (1900) . . . . . L., 106

15.—*Mortgage—Priority, relinquishment of—Civil Procedure Code (Act X of 1877), s. 295—Suit for refund of money so distributed—Order in a suit—Limitation Act (XV of 1877), Sch. II., Art. 13*—An order for distribution under s 295, Civil Procedure Code, is an order in a suit, and as such is excluded from the operation of Art. 13 of Sch. II to the Limitation Act. The scheme of s. 295, Civil Procedure Code, is rather to enable the Judge as a matter of administration to distribute the price according to what seem at the time to be the rights of the parties, and does not import a conclusive adjudication on those rights, which may be re-adjusted subsequently by a suit. A suit for refund of money paid to the defendant under an order of Court made under s. 295, Civil Procedure Code, on the ground that the plaintiff was entitled to it in preference to the defendant, is not a suit to set aside the order of distribution, and does not come within the Limitation Act, Sch. II, Art. 13. *Vishnu Bhikaji Phadke* v. *Achut Jagannath Ghate*

SALE IN EXECUTION OF DECREE—*continued*

6. DISTRIBUTION OF SALE-PROCEEDS—*continued.*

(1890), I. L. R., 15 Bom., 438, approved. On 4th May, 1883, certain villages were mortgaged to *S* for R15,000. On 30th June, 1883, the same were mortgaged to *P* for R7,000. On 3rd November, 1883, a fresh bond executed in favour of *S* for R20,000, which, by its terms, kept alive the bond of 4th May, 1883. *S* sued on the bond of November, 1883, only, and not on the bond of May, 1883, and obtained a decree on the bond of November. *P* also brought a suit on his bond of June, 1883, and obtained a decree. *Held* that the mere suing on the bond of November did not amount to relinquishment by *S* of his rights under the bond of 4th May, 1883. There was no necessity for *S* to sue on the bond of May in order to obtain a sale for the whole of their debt. SHANKAR SARUP *v.* LALA PHUL CHAND (1901)

[5 C. W. N., 649:
s.c., I. L. R., 23 All., 313;
L. R., 28 I. A., 203

16.—*Civil Procedure Code (XIV of 1882), s. 295—Rateable distribution under several decrees—Decrees must be against same judgment-debtor—Decree against judgment-debtor—Subsequent decrees against his legal representative and his estat*

one

son

then

of the

was then

time the

decree ag

Kashinatl

deceased'

Civil Pr

rateably

of the c

should be refused. Under s. 295 the money-

decrees

given m

In this

the other

the latter decree was expressed to be made against "Bhau Babaji, deceased, by his son Kashinath,"

17.—*Civil Procedure Code (Act XIV of 1882), ss. 285, 295—Execution of decree—Rateable division of proceeds of execution sale—Property attached in execution of decrees of several Courts—Attachment before judgment—Court of superior grade—Appeal—Revisional juris-diction.*—When property has been sold in execution of decrees in a Munsiff's Court, and, prior to the realisation of assets by sale, a decree-holder in the Subordinate Judge's Court, who

18.—*Civil Procedure Code (Act XIV of 1882), s. 295—Rateable distribution of proceeds of execution sale—"Prior to the realisation"—"Same judgment-debtor."*—The properties of a judgment-debtor were brought to sale, at the instance of

creditors above referred to was against a father,

19.—*Chambers—Civil Procedure Code (Act XIV of 1882), ss. 295, 310A—Sale in*

SALE IN EXECUTION OF DECREE— *continued.*

6. DISTRIBUTION OF SALE-PROCEEDS— *continued.*

695, followed. ROSHUN LALL *v.* RAM LALL MULLICK (1903) . . . I. L. R., 30 Calc., 262; [s.c., 7 C. W. N., 341

20.—*Rateable distribution—Civil Procedure Code (Act XIV of 1882), s. 295—Proportionate distribution of sale-proceeds—Decrees against the same judgment-debtor—Suit for refund of assets distributed.*—B obtained a decree against three judgment-debtors X, Y and Z. A obtained a decree against X and Y only. *Held* that A is entitled, under the provisions of s. 295 of the Code of Civil Procedure, to a proportionate distribution of the assets realised by the sale of property of X, Y and Z, so far as they represent the share of his own judgment-debtors X and Y in that property. *Deboki Nundun Sen* v. *Hart (1885), I. L. R., 12 Calc., 294,* overruled. GONESH DAS BAGRIA *v.* SHIVA LAKSHMAN BHAKAT (F B, 1903) I. L. R., 30 Calc., 583;

s.c. (RAM DAYAL BAGRIA *v* SHIVA LAKSHMAN BHAKAT) . . . . 7 C. W. N., 414

21.—*Civil Procedure Code, ss. 276, 295—Application for rateable share in proceeds of sale, not equivalent to an attachment.*—*Held* that an application, under s. 295 of the Code of Civil Procedure, for a rateable share in the proceeds of the sale of property attached by a creditor other than the applicant, is not equivalent to an attachment, and will be no bar to the judgment-debtor privately selling the property attached for the benefit of the attaching creditor. *Ganga Din* v. *Khushali (1885), I. L. R., 7 All., 702,* and *Durga Churn Rai Chowdhry* v. *Monmohini Dasi (1888), I. L. R., 15 Calc., 771,* followed. *Sorabji Edulji Warden* v. *Gobind Ramji (1891), I. L. R., 16 Bom., 91,* dissented from. MANOHAR DAS *v.* RAM AUTAR PANDE (1903) [I. L. R., 25 All., 431

22.—*Civil Procedure Code, ss. 233 and 295—Sale of decree, and transfer for execution to another Court—Application by transferees for rateable distribution of assets—Court to which such application should be made.* A decree was transferred for execution from Mirzapur to Gorakhpur: the decree-holder also sold his interest in the decree. The transferees thereupon made an application for execution in the Gorakhpur Court, and prayed for a rateable share of the assets which might be realized [illegible]

(1) that the Court to which the decree was transferred for execution had no power to entertain the transferees' application for a rateable share in the assets: such application could only be entertained by the Court which passed the decree; (2) that the order passed by the Gorakhpur Court could not [illegible]

of Civil Procedure *Badri Narain* v. *Jai Kishen Das (1891), I. L. R., 16 All., 483,* and *Amar Chandra Banerjee* v. *Guru Prosunno Mukerjee (1900), I. L. R., 27 Calc., 488,* referred to. TAMESHAR PRASAD *v.* THAKUR PRASAD (1903) [I. L. R., 25 All., 443

7. INVALID SALES.

FRAUD.

23.—*Code of Civil Procedure (Act XIV of 1882), ss. 244, 311, 312, 588—Allegation of fraud in application for setting aside sale.*—No second appeal lies from an order setting aside a sale under s. 312 of the Code of Civil Procedure, although an allegation of fraud is made in the application for setting aside the sale, when no attempt is made to substantiate the allegation. *Rojoni Kant Bagchi* v. *Hossain Uddin Ahmed (1899), 4 C. W. N., 638,* discussed and explained. *Nava Kumar Roy* v. *Golam Chunder Dey, I. L. R., 18 Calc., 422; Abhoya Dassi* v. *Pudmo Luchun Mondol, I. L. R.,* [illegible] v. [illegible] ved. [illegible] 4; s.c., [illegible] 124

24.—*Execution sale, application to set aside*— [illegible]

obtained permission to bid for the said property, constitutes fraud which would vitiate the sale. *Mahomed Gazee Choudhry* v. *Ram Lall Sen (1884), I. L. R., 10 Calc., 757,* referred to. Art. 178, Sch. II, of the Limitation Act would govern such a case. SRIMATI SARAT KUMARI DEBI *v.* NIMAI CHARN DEY SIRCAR (1900) . 5 C. W. N., 265

8. SETTING ASIDE SALE.

(a) GENERAL CASES.

25.—**Applicant**—*Civil Procedure Code (Act XIV of 1882), s. 310A—"Whose immovable property has been sold," in s. 310A, meaning of—Sale in execution of rent-decree—Simple mortgagee right of, to apply to set aside sale.*—A simple

SALE IN EXECUTION OF DECREE— *continued.*

8. SETTING ASIDE SALE—*continued.*

(*a*) GENERAL CASES—*continued.*

mortgagee is not a person entitled to have a sale set aside under s 310A, Civil Procedure Code. *Hamidal Huq v Matangini Dasi (1898), 2 C.*

26.——————*Application by an attaching creditor of the property sold—Locus standi—"Any person whose immovable property has been sold," meaning of.*—An attaching creditor is not a "person whose immovable property is sold," within the meaning of s 310A, Civil Procedure Code, and he is not entitled to make an application to set aside the sale under that section. *Matungini Dassi* v. *Monmotha Nath Bose (1900), 4 C. W. N., 542*, referred to KEDAR NATH SEN *v* UMA CHARAN (1900) . . . . . 6 C. W. N., 57

27.——————*Civil Procedure Code (Act XIV of 1882), ss 278, 283, 310A*—A person who purchased property before it was attached in execution of a decree, and who unsuccessfully preferred a claim

not competent to apply under that section for setting aside the sale ARJAN MOLLAH *v* JADUNATH ROY CHOWDRY (1902) . . . 7 C. W. N., 243

mortgage decrees passed under the Transfer of Property Act (IV of 1882) Ss 304 to 319 of the Code of Civil Procedure apply to all sales of immovable property. KRISHNAJI *v* MAHADEV VINAYAK (1900) . . . I. L. R., 25 Bom., 104

29.—**Application of Civil Procedure Code, ss. 310A, 311.**—Ss 310A and 311 of the Code of Civil Procedure apply to sales of mortgaged pro-

approved. MALLIKARJUNADU SETTI *v* LINGAMURTI PANTULU (F B, 1902) I. L. R., 25 Mad., 244

30.—**Beneficial owner**—*Suit for possession—Benamidar—Beneficial owner—Party—Whether, in a proceeding for setting aside a sale, the beneficial owner is a necessary party—Execution proceedings—Benamidar—Civil Procedure Code (Act XIV of 1882), ss 244, 311 and 437.*—A beneficial owner is not a necessary party to a proceeding

SALE IN EXECUTION OF DECREE— *continued.*

8. SETTING ASIDE SALE—*continued.*

(*a*) GENERAL CASES—*continued.*

for setting aside an execution sale. It is competent to the Court to set aside the sale finally and conclusively as against the beneficial owner, although his *benamdar* only, and not he, is made a party to the proceeding BARODA KANTA BOSE *v* CHUNDER KANTA GHOSE (1902) I. L. R., 29 Calc., 682; s c., 6 C. W. N., 706

framed by the Local Government thereunder governing such proceedings SHEO PRASAD *v* MUHAMMAD MOHSIN KHAN (1902)
[I. L. R., 25 All., 167

32.—"**Decree-holder**"—"*Decree-holder*", *meaning of—Civil Procedure Code (Act XIV of 1882), ss 311 and 295—Execution—What class of decree-holder can come in under s. 295—Locus standi—Appeal*—"The decree-holder", in s. 311 of the Civil Procedure Code includes any decree-holder for the enforcement and satisfaction of whose decree the sale has been held, and would therefore include

attachment and sale of the property of *B. B's* property was attached and sold in execution of *C's* decree; but, prior to the sale, several other persons who held decrees against *B* having applied to the District Judge for execution of their decrees, the sale-proceeds were rateably distributed amongst them all. Thereupon *A* made an application to the District Judge to set aside the said sale under s. 311: *Held* that, inasmuch as *A* was not entitled to come in and share in the rateable distribution of assets under s. 295, he was not the "decree-holder" within the meaning of s. 311, and had therefore no *locus standi* to make an application under that section. *Matungini Dassi* v. *Monmotha Nath Bose (1900), 4 C.W. N., 542*, referred to An appeal lies from an order passed under s. 312, refusing to set aside a sale on the ground that the applicant had no *locus standi* to apply under s. 311. BEJOY SINGH DUDHURIA *v.* HUKUM CHAND (1902)
[I. L. R., 29 Calc., 548

SALE IN EXECUTION OF DECREE—*continued*.

8. SETTING ASIDE SALE—*continued*.

(*a*) GENERAL CASES—*continued*.

33.—**Deposit by Co-sharer**—*Deposit in Court—Civil Procedure Code (Act XIV of 1882), s 310A.*—A person claiming under the Mahomedan law a share in some immovable property which has been sold in execution of a decree against his co-sharers, cannot come in and make a deposit under s 310A of the Civil Procedure Code. *Ramchandra* [illegible]

[illegible]

21 Mad, *416*, distinguished. ABDUL RAHAMAN *v* MATIYAR RAHAMAN (1902)

[I. L. R., 30 Calc., 425

34.—**Fraud**—*Sale in execution of decree fraudulently obtained—Fraud—Innocent purchaser—Purchase for valuable consideration—Inadequacy of price—Suit to set aside sale*—An *ex parte* decree was fraudulently obtained by the first defendant against the plaintiff, and in execution certain land of the plaintiffs, worth R2,000, was sold by auction, and was purchased by the second defendant for R400. The plaintiff sued to set aside the sale and to recover possession of the land. The facts found by the lower Courts were (1) that the decree was obtained by fraud, (2) and that the property was sold at a considerable undervalue. The purchaser had no knowledge of the fraud: *Held*, [illegible]

[illegible]

35.—**Gift**—*Civil Procedure Code (Act XIV of 1882), s 310A—Application to set aside a sale—Gift of the land prior to attachment—Effect of sale—Applicability of the section.*—Certain land was attached under a decree and sold. Application was thereupon made by a person, who claimed as donee of the land from the judgment- [illegible]

[illegible]

may apply under s. 310A, though he be no party to the suit or to the decree under which the sale took place ERODE MANIKKOTH KRISHNAN NAIR *v*. PUTHIEDETH CHEMBAKKOSERI KRISHNAN NAIR (1902) . . . . I. L. R., 26 Mad., 365

36.—**"Immovable property"**—*Civil Procedure Code, s. 311—Mortgage-decree whether immovable property.*—Having regard to the definition of "immovable property," in the General Clauses Act, a decree upon a mortgage is incapable of being described or regarded as immovable property; and, when a mortgage of certain immovable property is sold in execution of a decree, an application under s 311, Civil Procedure Code, to set aside the sale is incompetent. *Gous Mahomed* v *Khawas Ali Khan (1896), I. L. R., 23 Calc*, *450*, relied upon. BAIJ NATH LOHEA *v*. BINOYENDRA NATH PALIT (1901)

[6 C. W. N., 5

37.—**Limitation**—*Civil Procedure Code (Act XIV of 1882), ss. 310A, 551—Sale—Sale set aside on deposit of debt within 30 days—"Date of sale"—Limitation—Limitation Act (XV of 1877), s. 14, Sch. II, Art. 12—Appellate Court, order of—Second appeal—Exclusion of time during which a second appeal was pending*—Certain property was sold in execution of a decree against the judgment-debtor on the 22nd May, 1900 The sale [illegible]

[illegible]

ber the judgment-debtor applied, under s 310A of the Civil Procedure Code, to have the sale set aside on deposit of the requisite sum. *Held* that the application was barred by limitation, not having been made within 30 days from the date of sale; and that although, in computing the period of limitation, the time between the 25th May and the 2nd August might be excluded, the time between the 15th August and the 5th September, spent in prosecuting the second appeal, could not be excluded. CHOWDHRY KESRI SAHAY *v*. GIANI ROY (1902)

[I. L. R., 29 Calc., 626;
s.c., 6 C. W. N., 776

38.—**Private sale by judgment-debtor prior to Court sale**—*Civil Procedure Code (Act XIV of 1882), s 310 A and s. 244—Property privately sold by judgment-debtor prior to Court sale—Application by judgment-debtor to set aside a Court sale—Application rejected—Application to High Court under s 622 Practice*—In execution of a decree passed against a judgment-debtor, his property was sold by auction. Prior, however, to the execution sale, he effected a private sale to another person, and out of the proceeds he paid off the judgment-creditor, who duly certified that the decree was satisfied. Subsequently the judgment-debtor applied under s. 310A to set aside the execution sale. His application was refused by the Judge, on the ground that, at the date of the execution sale,

SALE IN EXECUTION OF DECREE—*continued*

8. SETTING ASIDE SALE—*continued.*

(*a*) GENERAL CASES—*continued.*

he had no interest in the property, having disposed of it by private sale. He held, therefore, that he could not apply under s. 310A. Against this order the judgment-debtor applied to the High Court under s 622 of the Civil Procedure Code (Act XIV of 1882). It was contended (1) that the order was one under s. 244 of the Civil Procedure Code; that an appeal lay from an order under that section, and that therefore he had no right of application under s. 622, and (2) that, he having disposed of his property by private sale, s. 310A did not apply. *Held* that s. 244 did not apply, inasmuch as the auction-purchaser certainly could not be taken to be the representative of the decree-holder, and, even assuming him to be a representative of the judgment-debtor, that section did not apply to a question between a party to the suit and his representative S 244, therefore, did not apply to the order complained of, which was consequently not appealable, for an

[I. L. R., 25 Bom., 631

39.—Recovery of money—*Indian Contract Act (IX of 1872), s 69—Transfer of Property Act (IV of 1882), s. 108 (g)—Non-agricultural*

suit does not lie by an under-tenant of non-agricultural land to recover from the tenant, his lessor, money which had been paid by him under s 310A, Civil Procedure Code, to set aside a sale of his lessor's interest under a decree passed against the lessor The money paid by the under-tenant after the sale was not money which the tenant was "bound by law to pay" under s. 310A, Civil Procedure Code, within the meaning of either s 69 of the Contract Act or s 108 (*g*) of the Transfer of Property Act *Quære*—whether the under-tenant has any status to pay in the money under s 310A, Civil Procedure Code. BEPIN BEHARI SARNOKAR *v* KALIDAS CHATTERJEE (1901) . 6 C. W. N., 336

40.—Suit in which applicant was not a

mortgagee had not been made a party—" Person whose immovable property has been sold"—Transfer of Property Act (IV of 1882), s 75—

SALE IN EXECUTION OF DECREE—*continued.*

8. SETTING ASIDE SALE—*continued.*

(*a*) GENERAL CASES—*concluded.*

the sale set aside, and paid into Court the amount due to the first mortgagee. *Held* that the second

prior mortgage continued. He was, therefore, not a person whose immovable property had been sold, within the meaning of s. 310A of the Civil Procedure Code, and had no *locus standi* to apply under that section MALLIKARJUNADU SETTI *v.* LINGA MURTI PANTULU (1902). I. L. R., 26 Mad., 332

(*b*) IRREGULARITY.

41.—Confirmation of sale—*Civil Procedure Code (Act XIV of 1882), ss 310A, 311 and 312—Application to set aside sale—Application rejected—Confirmation of sale—Suit to set aside sale*—A judgment-debtor having applied under s 310A of the Civil Procedure Code (Act XIV of 1882) to set aside an execution sale, the application was rejected and the sale was confirmed under s 312. Subsequently the judgment-debtor brought the present suit against the auction-purchaser, the judgment-creditor, and the assignee of the auction-purchaser, to set aside the sale *Held* that, where an order is passed under s. 312 confirming the sale, it is an order passed against the judgment-debtor,

42.—Fraud—*Civil Procedure Code (Act XIV of 1882), ss 244 and 511—Fraud—Execution proceedings—Partition—Mortgage*—After a sale

CHOWDHRY *v* JUDHISTER CHUNDRA SHAHA (1902) [I. L. R., 30 Calc., 142; s.c., 7 C. W. N., 305

43.—Inadequacy of price—*Civil Procedure Code (Act XIV of 1882), ss 287, 311—Sale proclamation, contents of—Inadequacy of price.*—

SALE IN EXECUTION OF DECREE—*continued.*

8. SETTING ASIDE SALE—*continued.*

(*b*) Irregularity—*continued.*

The absence of specification in the sale proclamation of the incumbrances to which a property advertised for sale is subject, and which are required by cl. (*c*) of s. 287 of the Civil Procedure Code to be specified, coupled with the fact that the value of the property as stated in the sale proclamation was much below the proper price, amounts to a material misrepresentation, which must be treated as a material irregularity in publishing the sale, within the meaning of s. 311. *Sadatnand Khan* v. *Phul Kuer (1898), 2 C. W. N., 550,* relied upon Where a property, subject to incumbrances, was worth at least ninety thousand rupees and was sold only for forty thousand: *Held* that the judgment-debtor sustained a substantial injury. The fact that the inadequacy of price was the result of irregularity in publishing the sale may either be established by direct evidence or be inferred from the circumstances of the case. *G* [illegible]
2[illegible]
R [illegible]
re [illegible]
D [illegible]

44.—Leave to bid—*Civil Procedure Code, ss. 244, 294—Procedure—Suit to set aside sale in execution, on the ground that the real purchasers were the decree-holders, who had not obtained leave to bid—Proper remedy by application.*— The plaintiff sued to set aside a sale of certain property in execution of a decree against him, on the [illegible] the above circumstances, the plaintiff's remedy was not by suit, but by application under s 244 and the last clause of s. 294 of the Code of Civil Procedure. *Viraraghava Ayyangar* v *Venkatacharyar, I L R, 5 Mad., 217, Viraghava* v. *Venkata, I. L. R., 16 Mad., 267; Chintamanrav Natu* v. *Vithabai, I L. R, 11 Bom., 588; Genu* v. *Sakharam, I. L R, 22 Bom, 271; Subbarayudu* v. *Kotayya, I. L. R, 15 Mad, 389; Mahomed Gazee Chowdhry* v *Ram Loll Sen, I. L. R., 10 Calc, 757; Mohendro Narain Chaturaj* v. *Gopal Mondul, I L R, 17 Calc, 769, Prosunno Kumar Sanyal* v. *Kali Das Sanyal, I L. R, 19 Calc., 683,* and *Bhuban Mohun Pal* v. *Nanda Lal Dey, I L R., 26 Calc, 324,* referred to Durga Kunwar v Balwant Singh (1901)

[I. L. R., 23 All., 478

45.—Postponement of sale—*Civil Procedure Code (Act XIV of 1882), s 311—Postponement of sale from proclaimed date, and subsequent sale without fresh proclamation—Waiver of fresh proclamation by judgment-debtor—Objection to sale, by other judgment-creditor, for want of proclamation—Sustainability.*—*A*, the decree-holder in a suit, attached property of his judgment-debtor. *B*, the holder of another decree against the same judgment-debtor, brought the property to sale in execution of his decree The sale was at first proclaimed for a certain date, but was twice postponed on the application of the judgment-debtor, who consented to waive the making of a fresh proclamation. *A* claimed to have the sale set aside on the ground of irregularity. *Held* that a waiver by a judgment-debtor of a fresh proclamation after a sale has been adjourned does not necessarily prevent a judgment-creditor from objecting to a sale so held, on that ground. *Semble* that the refusal by a Court to issue a fresh proclamation, if applied for by a judgment-creditor in such a case, would constitute a ground on which the regularity of the sale might be impeached. Chakrapani Chettiar *v.* Dhanji Settu (1900) . . I. L. R., 24 Mad., 311

46.———— *Civil Procedure Code (Act XIV of 1882), ss 291, 311—Waiver—Estoppel—Adjournment on application of judgment debtor—Fresh sale proclamation.*—An application by a judgment-debtor for an adjournment of the sale "without issue of fresh proclamation and beat of drum" does not amount to a waiver preventing him from applying to set aside the sale held on the day adjourned on the ground that proclamation of sale was [illegible]
consequentl[illegible]
that when [illegible]
he was ignc[illegible]
had not been properly posted up on the various properties according to law. Such a waiver does not amount to a waiver of any fraud practised upon the judgment-debtor *Giridhari Singh* v. *Hurdeo Narain Singh (1876), L. R., 3 I. A., 230,* and *T. R. Arunachellam Chetti* v. *V. R. R. M. A. R. Arunachellam Chetti (1888), L. R, 15 I. A., 171,* referred to. Preo Lall Paul Chowdhry *v.* Radhika Prosad Paul Chowdhry (1901)

[6 C. W. N., 42

47.———— *Civil Procedure Code (Act XIV of 1882), ss 291, 311—Waiver—Adjournment* [illegible]
specification is a material irregularity [illegible] meaning of s. 311, Code of Civil Procedure. *Surnomoyee Debi* v. *Dakhina Ranjan Sanyal (1896), I. L. R., 24 Calc, 291; Jamini Mohan* v. *Chandra Kumar Roy (1901), 6 C. W. N., 41; Venkata Subbaraya Chetti* v. *Zamindar of Karetinagar (1896), I L. R, 20 Mad, 159,* referred to. The fact that the judgment-debtor consents that the sale should be held without the issue of a fresh proclamation does not indicate that he waives the non-specification of the hour of the day to which the sale is adjourned, inasmuch as he has no control over the form of the order of the Court. To show that substantial injury was the result of the irregularity complained of, the judgment-debtor is only to

SALE IN EXECUTION OF DECREE—*continued*

8. SETTING ASIDE SALE—*continued.*

(b) IRREGULARITY—*continued.*

show that there is reason for inferring that it was due to and resulted from material irregularity. *Surnomoyee Debi* v. *Dakhina Ranjan Sanyal (1896), I. L. R., 24 Calc., 291*; *Macnaghten* v. *Mahabir Pershad Singh (1889), L. R., 16 I. A., 107*; and *Arunachellam Chetti* v. *Arunachellam Chetti (1888), L. R., 15 I. A., 171*, referred to. BHIKARI MISRA *v.* RANI SURJA MONI PAT MAHA DAI (1901) . . . . 6 C. W. N., 48

JAMINI MOHAN NUNDY *v.* CHANDRA KUMAR ROY (1901) . . . . 6 C. W. N., 44

49.—Publishing and conducting sale—*Ground for setting aside sale—Civil Procedure Code (Act XIV of 1882), ss. 310A, 311.*—It is not open to an applicant under s. 310A of the Civil

50.—Receipt—*Execution of decree—Joint decree—Sale in execution—Purchase by decree-holders—Receipt, for part of decretal money, given by one decree-holder on behalf of both—Sale set aside*

SALE IN EXECUTION OF DECREE—*continued.*

8. SETTING ASIDE SALE—*concluded.*

(b) IRREGULARITY—*concluded.*

purchasers had put in the receipt under the second clause of s. 294, and directed a re-sale, and this notwithstanding that the other decree-holder admitted that the receipt had been presented on his behalf also. On appeal to the District Judge, the order of the

(c) SUBSTANTIAL INJURY.

51.—Value of property—*Civil Procedure*

9. SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

RECOVERY OF PURCHASE-MONEY.

52.—*Civil Procedure Code (Act XIV of 1882), ss. 11, 315—Refund of purchase-money when judgment-debtor has no saleable interest in the property sold—Suit for such refund, whether maintainable—Remedy.*—S. 315 of the Code of Civil Procedure is not exhaustive, and does not confine an execution purchaser to the special remedy provided by that

6 C. W. N., 240

53.—*Decree—Conditions of sale—Title, abstract of, not corresponding with original—Setting aside sale, application for—Purchase-money, return of.*—A purchaser of property at the Registrar's sale in

SALE IN EXECUTION OF DECREE—*concluded.*

9 SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*concluded.*

RECOVERY OF PURCHASE-MONEY—*concluded.*

requisitions. On the 19th August, 1899, by an order of the Court the purchaser was to pay the balance of the purchase-money into Court (he having already

abstract, and, upon having certain Persian writing, which he discovered amongst them, read by an expert, found that the abstract of title did not correspond

debarred from applying to the Court to set aside the sale on the ground that the abstract was incorrect and contained a material misdescription; and that he was, under the circumstances, entitled to have his purchase-money refunded *In re Banister (1879), L. R., 12 Ch D., 131, 150*, *M'Culloch* v. *Gregory (1855), 1 Kay and J., 286*; *Else* v *Else (1871), L. R., 13 Eq., 196*; *Upendra Nath Mitter* v. *Obhoy Kali Dassee (1901), 5 C. W. N., 593*, referred to. AGHORE NATH MOOKERJEE *v.* ADMINISTRATOR-GENERAL OF BENGAL (1903)
[I. L. R., 30 Calc., 468

SALE OF GOODS.

See CONTRACT—BREACH OF CONTRACT.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT . . 7 C W. N., 912

two partners for the price of goods purchased—

The partner who had not signed the notes contended that the suit did not lie as framed, and that it should

SALE OF GOODS—*concluded.*

GAVARAPU SARRAPU *v.* RAMPRATAPU (1901)
[I. L. R., 25 Mad., 580

SALE-PROCEEDS.

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE.

——application of—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 30 Calc., 953

——distribution of—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 29 Calc., 803

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

——suit to recover surplus—

See LIMITATION ACT, 1877, SCH. II—
ART. 29; I. L. R., 30 Calc., 440
ART. 132 . 5 C. W. N., 356

SALT.

——position of peon of Salt Department—

See PUBLIC SERVANT.
[I. L. R., 28 Calc., 344

SAMAJ.

See BRAHMO SAMAJ.

SAMPLES.

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT.
[I. L. R., 29 Calc., 323

See WARRANTY, BREACH OF.
[I. L. R., 29 Calc., 587

SANCTION.

——of Collector—

See MADRAS ABKARI ACT, s 24.
[I. L. R., 26 Mad., 430

——of Court—

See CIVIL PROCEDURE CODE, s. 257A.
[I. L. R., 27 Bom., 96

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 26 Bom., 109

——to build—

See BENGAL MUNICIPAL ACT (III OF 1884), SS. 238 AND 273 . 5 C. W. N., 42

SANCTION—*concluded.*

—— **to build**—*concluded.*

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888), ss. 247, 250, 427.
[I. L. R., 30 Calc., 317

——**to build, given under misapprehension, induced by applicant**—

See CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899), ss. 449, 580 AND 631.
[7 C. W. N., 853

—— **to sue**—

See LEAVE TO SUE.

SANCTION FOR PROSECUTION.

See ADMINISTRATOR-GENERAL
[I. L. R., 30 Calc., 927

See CRIMINAL PROCEDURE CODE, s 476
[7 C. W. N., 423, 795

See FALSE CHARGE . 5 C. W. N., 106

See JOINDER OF CHARGES.
[I. L. R., 25 Bom., 90

See PENAL CODE, s 206
[I. L. R., 28 Calc., 217

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.
[I. L. R., 25 All., 126
„ 26 Mad., 139

1. WHERE SANCTION IS NECESSARY, OR OTHERWISE.

1.—Disobedience to order promulgated

required, under s 195 of the Code of Criminal Procedure, the previous sanction of the public servant who had promulgated the order. Sanction had, in fact, been granted by the Chairman of the Municipality in which the order was disobeyed; but the

SANCTION FOR PROSECUTION—*continued.*

1. WHERE SANCTION IS NECESSARY, OR OTHERWISE—*concluded.*

Magistrate held that such Chairman was not the public servant who had promulgated the order, and that it was not shown that he had been specially empowered to grant the sanction. *Held* that the order of acquittal was wrong. Inasmuch as the order in question had been promulgated by the Government, and not by any public servant, no sanction was required. QUEEN-EMPRESS *v* SOUTH (1900)
[I. L. R., 24 Mad., 70

being lodged against him under the section, it was contended that he was a public servant, within the meaning of s. 197 of the Code of Criminal Procedure, and that the Court could not take cognizance of the offence inasmuch as the sanction referred to in s.

3.—Tahsildar—*Criminal Procedure Code (Act V of 1898), s. 195—Alleged forgery of documents submitted to Tahsildar holding inquiry as to transfer of names in Land Register—Revenue Court—Necessity for sanction to prosecute offender.*—A *Tahsildar*, when holding an inquiry as to whether a transfer of names in a land register should be made or not, is a *Revenue Court*; and, before a party to any proceeding in such a Court can be prosecuted for an offence referred to in s. 195 (*c*) of the Code of Criminal Procedure, sanction should be obtained. QUEEN-EMPRESS *v* MUNDA SHETTI (1900)
[I. L. R., 24 Mad., 121

2. WHEN SANCTION MAY BE GRANTED.

4.—*Code of Criminal Procedure (Act V of 1898), ss. 195, 203—Sanction to prosecute for bringing a false complaint—Penal Code (Act XLV of 1860), s 211—Police-report declaring complaint false—Application for inquiry into the complaint—Complaint—Judicial determination.*—An application for an inquiry into their complaint, made by persons in showing cause why they should not be prosecuted for bringing a complaint declared by the

SANCTION FOR PROSECUTION—*continued.*

2. WHEN SANCTION MAY BE GRANTED—*concluded.*

police to be false, is in effect in the nature of a complaint, and sanction for prosecution for bringing a false complaint cannot be given unless and until that complaint is judicially determined. "Judicial determination" of a complaint does not necessarily mean the trial of the persons against whom the complaint is made, but means the final determination of the matter of the complaint by the officer holding the

3. NOTICE OF SANCTION.

5.—*Criminal Procedure Code, s 195—Notice to accused—Necessity.*—There is no hard-and-fast rule that notice must be given in all cases to an accused person before sanction is accorded for his prosecution IN THE MATTER OF GOVINDU (1902) [I. L. R., 26 Mad., 592

4. NATURE, FORM AND SUFFICIENCY OF SANCTION.

6.—**Sufficiency of Sanction.—Letter**—*Public servant—Substantive offence—Abetment—Fresh sanction—Criminal Procedure Code (Act V of 1898), ss 195, 197, 230—Penal Code (Act XLV*

forgery for the purpose of cheating At the trial it was contended on behalf of the accused that there could be no *conviction for abetment* when sanction had been given for prosecution for the substantive offence only. *Held* that the letter of the Inspector-General of Registration was a sufficient sanction to justify the conviction, and that no fresh sanction was necessary under s. 230 of the Criminal Procedure Code. PROFULLA CHANDRA SEN *v* EMPEROR (1903) [I. L. R., 30 Calc., 905 ; s.c., 7 C. W. N., 494

7.—**Naming of offender**—*Criminal Procedure Code (Act V of 1898), s 195 (4).*—Cl. (4) of s. 195 of the Code of Criminal Procedure applies only to cases in which, at the time of granting sanction to prosecute, the offender is uncertain or unknown. Where there is no doubt as to whom the prosecution is to be directed against, the offender should be named. SEQUEIRA *v.* LUJA BAI (1901) [I. L. R., 25 Mad., 671

8.—**Order in alternative**—*Criminal Procedure Code, ss. 195, 476—Order directing prosecution—Order framed in the alternative held to be bad—Revision.*—A District Magistrate, having before him an application for the grant of sanction to prosecute a certain person for perjuries alleged

SANCTION FOR PROSECUTION—*continued.*

4. NATURE, FORM AND SUFFICIENCY OF SANCTION—*concluded.*

this order, being framed in the alternative, was a bad order, and could not be acted upon. HASAN SHAH *v* HARDEO SAHAI (1903) . I. L. R., 25 All, 234

5. POWER TO GRANT SANCTION.

10.—**What Court**—*Code of Criminal Procedure (V of 1898), s. 195 (b)*—The Court which tries the case on its merits, and not the Court before which proceedings were instituted and process is issued, is the proper Court to grant sanction for prosecution under s. 195, Criminal Procedure Code. *Putiram Ruidas v. Mahomed Kasem (1895), 3 C. W. N, 33,* followed. JEEBUN KRISTA SHAW *v.* BENOY KRISTA SHAW (1901) . 6 C. W. N., 35

11. ——— *Criminal Procedure Code (Act V of 1898), ss. 195 (7), 407 (2)—Court*

empowered to hear appeals under the provisions of

6 DISCRETION IN GRANTING SANCTION.

12.—**Forgery**—*Criminal Procedure Code (Act V of 1898), s 195, sub-s. (3)—Evidence—Tendering in evidence document alleged to be forged, but not judicially considered ; sanction to prosecute for.*—An application under s. 195 of the Criminal Procedure Code, for sanction to prosecute for tendering in evidence a document alleged to be forged, should

SANCTION FOR PROSECUTION— *continued.*

6. DISCRETION IN GRANTING SANCTION— *concluded.*

not be refused on the ground that the document was only tendered in evidence and not judicially considered But, where there are no *primâ facie* good grounds for instituting criminal proceedings, such sanction should not be granted. GURU CHARAN SHAHA *v.* GIRIJA SUNDARI DASSI (1902)
[I. L. R., 29 Calc., 887; s.c., 7 C. W. N., 112

Assistant Magistrate declined to interfere, on the ground that, as the Sub-Magistrate had had judicial evidence before him, and had also held the necessary inquiry before granting sanction, the necessary conditions had been fulfilled, and it was not for him,

7. REVOCATION OF SANCTION

14.—Chief Judge of Small Cause Court—

Court composed of one or more Judges IN THE MATTER OF GOVERDHANDAS MEGHJI (1902)
[I. L. R., 27 Bom., 130

15.—Commissioner of Bhagalpur—*Jurisdiction—Sanction to prosecute—Criminal Procedure*

Court of the Deputy Commissioner of the Sonthal Parganas is to be deemed to be subordinate to the Court of the Commissioner of Bhagalpur Accordingly, an application against an order of the Deputy Commissioner of the Sonthal Parganas, revoking a sanction given by the Subordinate Judge of Godda under s. 195 of the Code of Criminal Procedure, should be made to the Commissioner of Bhagalpur,

SANCTION FOR PROSECUTION— *continued.*

7. REVOCATION OF SANCTION—*continued.*

and not to the High Court. MUNNA LAL CHOWDHRY *v.* PADMAN MISSER (1903)
[I. L. R., 30 Calc., 916

16.—Joint Magistrate—*Appeal—Revocation*

sanction to prosecute granted under s. 195 of the Code by an Assistant Magistrate exercising second class powers. *Held* that the existence of the special power which was conferred on him by the District Magistrate did not constitute the Joint Magistrate the Court to which appeals ordinarily lay under s 195, cl (7), from a Magistrate exercising second class powers, and that his order revoking the sanction must be set aside, as having been made without jurisdiction. SADHU LALL *v.* RAM CHURN PASI (1902) . . . I. L. R., 30 Calc., 394; [s.c., 7 C. W. N., 114

17.—Indefinite sanction—*Sanction to prosecute for bringing a false charge—Criminal Procedure Code (Act V of 1898), s. 195—Sanction, general and indefinite*—On information given by the petitioner against certain persons, accusing them of some offences under the Penal Code, the Police investigated the matter and declared the charge to be false On a judicial inquiry, the

Indian Penal Code, was of an indefinite character,

the Court giving the sanction or upholding it will

SANCTION FOR PROSECUTION—*continued.*

7. REVOCATION OF SANCTION—*concluded.*

not be properly exercising the discretion vested in it by law. IN RE PAREE KUNHAMMED (1902)
[I. L. R., 26 Mad., 116

8. EXPIRY OF SANCTION.

19.—**Computation of period**—*Criminal Procedure Code (Act V of 1898), s 195—Sanction to prosecute—Computation of the period of six months—Starting point—Date of original sanction and not of appellate order.*—The period of six months, during which sanction to prosecute remains in force under s 195 (6) of the Code of Criminal Procedure, is to be computed from the date of the original order granting sanction, and not from that of a final order of an Appellate Court declining to revoke it. IN RE MUTHUKUDAM PILLAI (1902)
[I. L. R., 26 Mad., 190

20.—**Extension of period**—*Criminal Procedure Code (Act V of 1898), s. 195 (b)—Appeal against order according sanction—Disposal of appeal after expiration of six months from order according sanction—Application for extension of time—"Good cause"*—Sanction was accorded for a prosecution, and an appeal was preferred against the order, which was not disposed of until after the expiration of six months from the date of the order. Upon an application being made for an extension of time for the prosecution of the accused: *Held* that good cause had been shown for the extension. KARUPPANA SERVAGARAN *v* SINNA GOUNDEN (1902)
[I. L. R., 26 Mad., 480

9. POWER TO QUESTION GRANT OF SANCTION.

21.—**Court trying the case**—*Criminal Procedure Code (Act V of 1898), s. 195—Prosecution sanctioned by competent authority—Trial by another Magistrate in pursuance of sanction—Competency of Court to question propriety of sanction*—Where sanction has been accorded under s 195 of the Criminal Procedure Code by a competent Court, and a prosecution is instituted in [illegible]

been committed in any proceeding in the Court by which the sanction was granted. PACHAI AMMAL (1902) . . . . I. L. R., 26 Mad., 189

22.—**Superior Magistrate**—*Criminal Procedure Code (Act V of 1898), s 195—Grant of sanction to prosecute—Failure to decide that a primâ facie case has been made out—Legality of sanction.*—Application was made to a second class Magistrate for sanction to prosecute a person on a charge of abetment of giving false evidence in a judicial proceeding. The Magistrate held an inquiry and examined three witnesses, and then refused to accord sanction Application was then made to the Sub-Divisional Magistrate, who granted sanction. In

SANCTION FOR PROSECUTION—*concluded.*

9. POWER TO QUESTION GRANT OF SANCTION—*concluded.*

doing so, he did not hold that a *primâ facie* case had been made out, or that there was a probability of securing a conviction. He expressed the view that it was essential that the truth of the matter should be threshed out, and, for that reason, sanctioned the prosecution, as that appeared to be the only course by which it could be decided whether or no the very serious offence charged had been committed. *Held* that this was no ground for granting sanction, or for setting aside the order of the second class Magistrate refusing sanction. VENKATESA AYYANGAR (1902)
[I. L. R., 26 Mad., 193

SAPINDAS.

See HINDU LAW—

ADOPTION—REQUISITES FOR ADOPTION—AUTHORITY;
[I. L. R., 26 Mad., 627, 631

INHERITANCE—GENERAL HEIRS—SAPINDAS.

SCHEDULED DISTRICTS ACT (XIV OF 1874).

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL
[I. L. R., 25 Bom., 667

——ss. 3, 5 and 6—

See LEGAL PRACTITIONERS ACT, ss. 6 AND 8 . . I. L. R., 24 All., 348

SEA.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS.

SEAL.

See REGISTRATION ACT, s. 60.
[6 C. W. N., 528

SEAL WARRANT.

[illegible] ART. [illegible] ON— [illegible] REE- [illegible] 580

SEARCH BY POLICE.

See CRIMINAL PROCEDURE CODE, s. 103.

See MALICIOUS SEARCH.
[I. L. R., 27 Bom., 590

SEARCH-WARRANT.

See STAMP ACT (II OF 1899), s 33
[I. L. R., 25 Mad., 525

SEARCH-WARRANT—*concluded.*

——disposal of property—

See CRIMINAL PROCEEDINGS.
[I. L. R., 28 Bom., 552

SECOND APPEAL.

See SPECIAL OR SECOND APPEAL.

SECRETARY OF STATE.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—PARTIES.
[7 C. W. N., 377

——liability of, for wrongful attachment—

See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS . I. L. R., 28 Calc., 540

——suit against—

See CIVIL PROCEDURE CODE, s. 424
[I. L. R., 24 Mad., 279
" 25 All., 187

1.—Suit against—*Jurisdiction—Defamation in Government Resolution—Secretary of State, liability of, to be sued—Governor and Members of Council, Liability of—Act of State—Government*

honesty and trustworthiness The Resolution then set forth the penalties inflicted in respect of the said misconduct. The defendant (*inter alia*) contended that the suit was not maintainable *Held* that the Court had no jurisdiction, and that the suit was not maintainable, on the following grounds: (1) The

SECRETARY OF STATE—*concluded.*

suit would lie against the East India Company in respect of acts of State or acts of Sovereignty, and therefore no suit in respect of such acts lies against the Secretary of State in Council. (3) The plaintiff was a public officer, whose employment was one

powers (*e.g.*, of reduction or censure). It is open to the Government, by Resolution or otherwise, to

malice is allowed, and no proof of malice takes away the privilege No action, therefore, could be based on any libel, however malicious, contained in the Resolution. It was contended for the defendant

SECRETARY OF STATE FOR INDIA IN COUNCIL (1902)
[I. L. R., 27 Bom., 189

2.——————*Illegal detention of property*

SECURITY.

See PRODUCTION OF PROPERTY.
[7 C. W. N., 522

——to appear—

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 630

See RECOGNIZANCE TO APPEAR.

——to keep the peace—

See RECOGNIZANCE TO KEEP PEACE.

SECURITY FOR COSTS.

See DIVORCE ACT (IV OF 1869).
[I. L. R., 30 Calc., 631

See DIVORCE ACT, s. 36 6 C. W. N., 414

See LETTERS PATENT, HIGH COURTS, 1865 CL. 15 . I. L. R., 25 Mad., 654
„ 26 Mad., 502

See PRACTICE—CIVIL CASES—SECURITY FOR COSTS.

See RES JUDICATA—CAUSES OF ACTION.
[I. L. R., 26 Bom., 637

—Suit—*Practice—Civil Procedure Code (XIV of 1882), s 380—Two plaintiffs, father and daughter—Suit for damages for breach of promise to marry.*—A Parsi father and daughter (plaintiffs 1 and 2) sued for R10,000 as damages for the defendant's breach of his promise to marry the daughter (plaintiff 2) The defendant alleged that the suit was really a suit for the benefit of the father, who sought to make money out of his daughter's betrothal; that he (the father) ,was an undischarged insolvent and not in a position to pay costs if he lost the suit; and that the second plaintiff (the daughter) had no property in India. The defendant took out a summons under s. 380 of the Civil Procedure Code, requiring the plaintiffs to give security for costs. The Court ordered that security for costs should be given. BOMANJI JAMSETJI MISTRI *v.* NUSSERWANJI RUSTOMJI MISTRI (1902)
[I. L. R., 27 Bom., 100

SECURITY FOR GOOD BEHAVIOUR.

See REFERENCE TO HIGH COURT—CRIMINAL CASES—SECURITY FOR GOOD BEHAVIOUR.

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY
[I. L 23 R., All., 422

1.—Bad livelihood—*Code of Criminal Procedure (Act V of 1898), s 109—"Ostensible means of subsistence," proof of—"Doing no work," if sufficient—"Previous conviction," how far relevant —Procedure*—The fact that a man does no work, or that he was once before convicted for bad livelihood, does not justify a Magistrate, without being satisfied from evidence that since his release the accused has no ostensible means of livelihood, in ordering him to furnish security for good behaviour. QUEEN-EMPRESS *v* POORAN AGARWALLA (1900)
[5 C. W. N., 28

SECURITY FOR GOOD BEHAVIOUR—*continued.*

an "officer in charge of a police-station", within the meaning of cls. (*p*) and (*s*) of s. 4, Code of Criminal Procedure, had no authority to arrest him. *Held* that, whether the arrest was illegal or not, the Bench ought not to have discharged the accused but should

[illegible]

how he came before them being immaterial. *Emperor v. Ravalu Kesigadu (1902), I. L. R., 26 Mad., 124,* approved. *Held, also,* that, s 55 having been expressly made applicable to the police in Calcutta, the arrest of the accused by the Inspector was legal. The Criminal Procedure Code does not apply to the Police in Calcutta unless expressly made applicable to them [s. 1, sub-s. (2)]. Cls. (*p*) and (*s*) of s. 4, Code of Criminal Procedure, do not apply to the Police in Calcutta. SOLICITOR TO THE GOVERNMENT OF INDIA *v* MADHO DHOBI (1903)
[7 C. W. N., 661

3.—Character of proceedings—*Discharge of* [illegible]

4.—Delegation of inquiry—*Criminal Procedure Code, ss. 110, 118—Inquiry into sufficiency of security delegated to Tahsildar—Practice.*—*Held* that it is not competent to a Magistrate who has passed an order under s. 118 of the Code of Criminal Procedure, to delegate to another officer the inquiry into the sufficiency of the security tendered, but such inquiry must be made by the Court by which the original order was passed. *Queen-Empress v. Pirthi Pal Singh, Weekly Notes, 1898, p. 154,* followed. EMPEROR *v.* TOTA (1903)
[I. L. R., 25 All., 272

5.—Evidence of repute—*Criminal Procedure Code (Act V of 1898), ss. 110, cl. (f), 117—Repute, admissibility of evidence of—Evidence of repute is not admissible in cases coming under cl.(f) of s 110 of the Code of Criminal Procedure*— [illegible]

annoying the villagers in various ways, by knocking at their doors at night or throwing brick-bats on the roof and annoying respectable women: *Held* that these imputations, even if proved, do not constitute conduct so as to render the petitioners liable to give security for good behaviour by reason of their being so desperate and dangerous as to render their being at large without security hazardous to the community. AKHOY KUMAR CHATTERJEE *v.* QUEEN-EMPRESS (1900) . . . 5 C. W. N., 249

6.—Grounds for refusing to accept surety—*Criminal Procedure Code (Act V of 1898), ss 110, 122—Tender of surety—Consid-*

SECURITY FOR GOOD BEHAVIOUR— *continued.*

eration of a question by High Court outside rule.—Case in which the High Court pointed out to the Magistrate below what are not valid grounds for refusing a surety under s 122, Criminal Procedure Code, although no rule was issued on the subject. Where a Magistrate refused to accept sureties tendered by a person bound to be of good behaviour, on such grounds as that they were unfit to control the defendant, that they were not residents of the village, and in one case that two persons were members of the same firm: *Held* that these were not valid grounds for refusing to accept a surety under s 122, Criminal Procedure Code. The question is not whether a surety can supervise a person for whom he stands surety, but whether he is a person of sufficient substance to warrant his being accepted. *Abinash Malakar* v *The Empress (1900), 4 C. W. N., 797*, approved RAM PERSHAD *v* KING-EMPEROR (1902) . 6 C. W. N., 593

7. ———— *Criminal Procedure Code, s 122—Sureties offered refused on the ground of their relationship to the person required to find security*.—Where, on an order to find security for good behaviour, the Magistrate refused to accept the sureties tendered, on the sole ground that they were relations of the person against whom the order had been passed, it was held that relationship to the person called upon to find security was, so far from being an objection, a most useful qualification in the persons tendered as sureties EMPEROR *v.* SHIB SINGH (1902) . I. L. R., 25 All., 131

8.—**Habitual offenders**—*Thief—Habitual thieves and dacoits—Desperate and dangerous characters—Evidence—Specific acts—General repute—Criminal Procedure Code (Act V of 1898), ss 110 and 117*.—A charge under cl. (*f*), s. 110, of the Criminal Procedure Code cannot be proved by general reputation, but must be proved by definite evidence. To prove a charge under s. 110, that a person is by habit a thief and a dacoit, or that he is so desperate and dangerous as to render his being at large without security hazardous to the community, there should be proof of specific acts *showing that he, to the knowledge of some particular* individual, is a dangerous or desperate character It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and a dangerous character, when they themselves have no personal knowledge of or acquaintance with him Such evidence is not only such as could not safely be acted upon, but is also likely to work serious prejudice KALAI HALDAR *v* EMPEROR (1901) [I. L. R., 29 Calc., 779

9. ———— *Proceedings instituted by Magistrate on his own knowledge or suspicion—Transfer, right of accused to a—Criminal Procedure Code (Act V of 1898), ss 110, 117 and 191*.—Where a Magistrate has framed a proceeding under s. 110 of the Criminal Procedure Code against a party, and has proceeded in some measure, if not mainly, on his own knowledge of the character of that party, such Magistrate is not a proper person to proceed with the trial under s 117 of the Code and

10.—**Jurisdiction of Magistrate**—*Criminal Procedure Code (Act V of 1898), s 110—Magistrate, jurisdiction of, to require security for good behaviour—Residence outside his jurisdiction*.—

KITABDI *v* QUEEN-EMPRESS (1900) [5 C. W. N., 29

11. ———— *Surety bond—Acceptance by Subordinate Magistrate of bond—Cancellation of such bond by District Magistrate—Jurisdiction—Criminal Procedure Code (Act V of 1898), ss 110 and 125*.—Where the security bond of the petitioner, who had been bound over to be of good behaviour, and the surety bonds of his sureties, had

12.—**"Offences involving a breach of the peace", meaning of**—*Immoral and indecent acts—Criminal Procedure Code (Act V of 1898), ss 106 and 110, cl (e)*.—The words "offences involving a breach of the peace," in s 110, cl (*e*), of the Criminal Procedure Code, mean offences in

give security for good behaviour under s. 110, cl (*e*), of the Code: *Held* that the order for security should be set aside, as the offences were not such as involved a breach of the peace, within the meaning of that clause. ARUN SAMANTA *v* EMPEROR (1902) [I. L. R., 30 Calc., 366

13.—**Reference to Sessions Judge**—*Criminal Procedure Code, ss 123 and 340—Reference to the Sessions Judge—Notice to be given of proceedings before the Judge to the persons required to find security*.—Where, under s. 123 of

SECURITY FOR GOOD BEHAVIOUR—*concluded.*

the Code of Criminal Procedure, reference is made to the Sessions Judge, in the case of a person called upon by a Magistrate to find security for a term exceeding one year, it is expedient, and highly desirable for the ends of justice, that a date should be fixed for the hearing of such reference, and that notice of such date should be given to the person concerned. *Jhoja Singh v Queen-Empress (1896), I. L. R, 23 Calc., 493,* and *Nakhi Lal Jha v. Queen-Empress (1900), I. L. R, 27 Calc., 656,* followed. *Queen-Empress v. Ajudhia, Weekly Notes, 1898, p. 60,* and *Queen-Empress v Mutasaddi Lal (1898), I. L. R., 21 All., 107,* referred to. EMPEROR v. GIRAND (1903) I. L. R., 25 All., 375

14.—**Residence of sureties**—*Criminal Procedure Code, ss. 110 et seq —Power of Court to assign geographical limits within which the sureties required must reside —Held* that a Court, in ordering security for good behaviour to be given with sureties, is competent to assign some geographical limits within which the sureties required must reside. *Queen-Empress v Rahim Bakhsh (1898), I. L. R., 20 All., 206,* referred to. EMPEROR v NABBU KHAN (1902) . . . I. L. R., 24 All., 471

15.—**Revival of proceedings**—*Criminal Procedure Code, ss 110, et seq., and 437—Power of District Magistrate to re-open proceedings on the same record, after the discharge of the person called upon to show cause by a Magistrate of the first class —Held* that it is competent to the Magistrate of the District, in the case of a person who has been called upon, under s 110 of the Code of Criminal Procedure, by a Magistrate of the first class, to show cause why he should not furnish security for good behaviour, and has been discharged by such Magistrate under s. 119 of the Code, to institute fresh proceedings against such person upon the basis of the record that was before the first class Magistrate *Queen-Empress v. Mutasaddi Lal (1898), I L R., 21 All., 107, Queen-Empress v Ratti, Weekly Notes, 1899, p 203; Queen-Empress v. Ahmad Khan, Weekly Notes, 1900, p. 206,* and *Queen-Empress v Iman Mondal (1900), I. L. R., 27 Calc., 662,* referred to. KING-EMPEROR v FYAZ-UD-DIN (1901) . . I. L. R., 24 All., 148

16.—**Term**—*Criminal Procedure Code (Act V of 1898), ss 112, 118, 144, 145—Notice to give security for three months—Order to give security for twelve months—Validity—Discretion to proceed under s 107 or ss 144 and 145.*—Where a notice is issued under s 112 of the Code of Criminal Procedure to a defendant, to show cause why he should not give security to be of good behaviour for three months, the Magistrate has no power to order security to be given for a longer period Where a defendant is found by the Magistrate to be in

[illegible]

653, distinguished. BELAGAL RAMACHARLU v. EMPEROR (1902) . . I. L. R., 26 Mad., 471

SENTENCE.

See APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE. [I. L. R., 23 All., 497

See FINE.

See IMPRISONMENT.

See WHIPPING. [I. L. R., 25 Bom., 712

——**powers of High Court as to sentences**—

See REFORMATORY SCHOOLS ACT—

ss. 8, 9, 16; . 5 C. W. N., 210
ss. 8, 16 I. L. R., 28 Calc., 423

IMPRISONMENT.

1.—**Imprisonment in default of fine**—Under s. 388 (2) of the Code of Criminal Procedure,

[illegible]

2.—**Imprisonment in default of giving security for good behaviour**—*Criminal Procedure Code, ss 110, 123—Security for good behaviour—Term for which imprisonment in default of finding security should be ordered*—Although it is within the competence of a Sessions Judge, acting under s 123 (3) of the Code of Criminal Procedure,

[illegible]

(1901) . . . . [illegible]

SEPARATE ACQUISITION.

See HINDU LAW—JOINT FAMILY—

PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY;

NATURE OF, AND INTEREST IN, PROPERTY.

SEPARATE CHARGES.

See JOINDER OF CHARGES.

SEPARATE OFFENCES

——**conviction of**—

See APPEAL IN CRIMINAL CASE—PRACTICE AND PROCEDURE. [I. L. R., 30 Calc., 288

——**trial of**—

See JOINDER OF CHARGES.

SEPARATE PROPERTY.

See SEPARATE ACQUISITION.

SERVANT.

See MASTER AND SERVANT.

See PUBLIC SERVANT.

——liability of—

See BENGAL EXCISE ACT (VII OF 1878)—

s. 53 ; . I. L. R., 29 Calc., 496
s. 59 . " " " 606

SERVICE OF PROCESS.

See SUMMONS, SERVICE OF.

SERVICE TENURE.

——ghatwali tenure—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY [I. L. R., 28 Calc., 483

throughout a period of 120 years, and the land descended hereditarily from father to son, there having been no instance of resumption during that period. Moreover, the present holder of the *zamindari* had taken leases from the *mokhassadars* as if they were

SERVICE TENURE—*concluded.*

SESSIONS JUDGE.

See CHARGE TO JURY.

See FALSE EVIDENCE—GENERAL CASES [5 C. W. N., 615, 630 (twice)

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES. [I. L. R., 26 Mad., 139

——duty of—

See JUDGMENT—CRIMINAL CASES [7 C. W. N., 30

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE

See REFERENCE TO HIGH COURT—CRIMINAL CASES . . 7 C. W. N., 345

See REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED . 7 C. W. N., 77

See VERDICT OF JURY—GENERAL CASES [7 C. W. N., 135

——powers of—

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . 6 C. W. N., 72

SESSIONS JUDGE, JURISDICTION OF

See CHARGE—FORM OF CHARGE. [I. L. R., 28 Calc., 434

See DISCHARGE OF ACCUSED, [I. L. R., 24 Mad., 136

See MAGISTRATE—RE-TRIAL OF CASES [I. L. R., 29 Calc., 412

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

LIKELIHOOD OF BREACH OF THE PEACE ; [I. L. R., 28 Calc., 416

DECISION OF MAGISTRATE AS TO POSSESSION . 5 C. W. N., 71

See REVISION—CRIMINAL CASES—ACQUITTALS . . . 7 C. W. N., 711

1.—Evidence recorded partly by another

SESSIONS JUDGE, JURISDICTION OF —*continued.*

evidence not recorded by himself, and he cannot do

[I. L. R., 26 Bom., 50

2.—**Order for re-trial on appeal**—*Criminal Procedure Code (Act V of 1898), ss 423 (b), 232—*

trate had no jurisdiction. Apart from the general power given to an Appellate Court to order re-trial, under s. 423 (*b*), Code of Criminal Procedure, a

defence by the absence of a charge or a defect in the

framed by the Magistrate against them, however, referred only to the knowledge and belief and acts and omission of the accused themselves The Sessions

charges so amended as to have reference to the acts and omissions of the agents *Held* that the order for re-trial was legally made by the Sessions Judge. SARAT CHANDRA SHAH CHOWDHRY *v* EMPEROR (1902) . . . . . . 7 C. W. N., 301

3.—**Powers on revision**—*Conviction of*

Appellate Co

power to or

PANDEY *v* C

4.—**Qualification**—*Criminal Procedure Code (Act V of 1898), ss 476, 487, 556—False statement made before District Judge—Order for inquiry—Conviction—Appeal to the Sessions Judge—Sessions Judge whether interested in the case, and disqualified from hearing appeal*—A Sessions Judge is not, by reason merely of having as a District Judge ordered an inquiry under s 476, Code of Criminal Procedure, disqualified under s 487 of that

SESSIONS JUDGE, JURISDICTION OF —*concluded.*

Code from trying the case, or hearing an appeal when the case has been tried by a lower Court; nor does this make him "personally interested" in the case within the meaning of s. 556 of the Code

[7 C. W. N., 708

SET-OFF.

See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS. I. L. R., 25 All., 266

1. GENERALLY.

1.—**Decretal amount**—*Decretal amount as set-off—Civil Procedure Code (Act XIV of 1882),*

Held that the lower Court was wrong in not entertaining the claim of set-off raised by the defendant

2. CROSS-DECREES.

2.—*Civil Procedure Code, s. 246—Execution of decree—Decree against which set off is claimed not before the Court for execution*—S. 246 of the Code of Civil Procedure clearly contemplates that, where one decree is sought to be set off against

3.—*Civil Procedure Code (Act XIV of 1882), ss 233, 246—Cross-decrees on same day against same parties in different suits—Subsequent transfer of one decree to third party—Petition for execution by transferee decree-holder—Right of transferee subject to equity of cross-decree-holder.*—On 3rd February, 1900, cross-decrees were passed between *A* and *B* in different suits. *A*'s decree against *B* was for a larger amount than *B*'s decree against *A*. On 25th

decree against *A*. The transfer from *B* to *C* could take effect against *A* in respect of his cross-decree

SET-OFF—*concluded.*

2. CROSS-DECREES—*concluded.*

only after *A* received notice of it. That being so, the decree so transferred, being for a smaller amount than *A's*, became incapable of execution, under the equitable principle enunciated in s 246 of the Code of Civil Procedure At the date of the completion of transfer by notice, *B's* decree was subject [illegible]

[illegible]

decrees are passed by the Court whose duty it is to [illegible]

SETTLEMENT.

See MAHOMEDAN LAW—ENDOWMENT.
[I. L. R., 30 Calc., 666

See RESUMPTION—EFFECT OF RESUMPTION —EFFECT ON PATTA.
[L. R., 30 I. A., 159

See SUCCESSION . L. R., 30 I. A., 190

SHARE.

——in an estate; registration of—

See LAND REGISTRATION ACT (BENGAL ACT VII OF 1876), ss 42, 44, 78
[I. L. R., 30 Calc., 680

SHARES.

——transfer of—

See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES

SHEBAIT.

See HINDU LAW—
ENDOWMENT—
DEALING WITH, AND MANAGEMENT OF, ENDOWMENT,
[5 C. W. N., 273
ALIENATION OF ENDOWED PROPERTY; . 6 C. W. N., 663
WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED
[I. L. R., 29 Calc., 716

See PARTIES—PARTIES TO SUITS—IDOL.
[6 C. W. N., 178

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.
[6 C. W. N., 178

SHIP, ARREST OF.

See ADMIRALTY OR VICE-ADMIRALTY JURISDICTION
[I. L. R., 29 Calc., 402

SHIPPING DOCUMENT.

See LETTER OF CREDIT.
[I. L. R., 25 Bom., 706

SIGNATURE.

——forged—

See HUNDI—ENDORSEMENT.
[5 C. W. N., 313

——of plaint—

See CIVIL PROCEDURE CODE, s. 432
[I. L. R., 25 All., 635

See PLAINT—VERIFICATION AND SIGNATURE . . . 5 C. W. N., 91

——of warrant of arrest—

See WARRANT OF ARREST—CIVIL CASES.
[6 C. W. N., 645

——on blank paper—

See DEED—EXECUTION. 6 C. W. N., 329

——sufficiency of—

See DOCUMENT. I. L. R., 30 Calc., 433

[illegible]

Construction of Statutes—It is not imperatively required by s 59 of the Transfer of Property Act, 1882, that a mortgage, where the principal money [illegible]

Per AIKMAN, J—Whether or not the autograph [illegible]

[illegible]

SIKHS.

——application of Probate Act to—

See PROBATE AND ADMINISTRATION ACT (V OF 1881) . . 7 C. W. N., 895

SLANDER.

See LIMITATION ACT, 1877, SCH. II, ARTS. 24 AND 25 . I. L. R., 24 All., 368

—*Defamation—Action for slander—Special damage—Damages for mental distress alone, not recoverable—Cause of action—Presidency Town—English Law of Slander, rules of—Charter of 1726—Limitation Act (XV of 1877), Sch. II, Art. 25.*—In an action for damages against the defendant, for [illegible]

[illegible] I. L. R., 25 Calc., 603, approved and followed. *Parvathi* v. *Mannar (1884), I. L. R., 8 Mad*, *175*, discussed. *Kashiram Krishna* v. *Bhadu Bapuji (1870) 7 Bom. H. C., A. C., 17*; *Jogeshwar Sharma* v. *Dinaram Sharma (1898), 2 C. W. N*, *123 (Notes)*; and *Dawan Singh* v. *Mahip Singh (1888), I. L. R*, *10 All., 425, 456*, distinguished. Damages are not recoverable for mental distress *alone*, caused to the plaintiff by slanderous words conveying insult *Wilkinson* v. *Downton (1897), 2 Q B*, *57*; *Lynch* v. *Knight (1861), 9 H. L. C*, *577, 598*, referred to. By the Common Law of England, introduced into Calcutta by the Charter of 1726, a person injured by slanderous words can recover damages in an action, when actual damage has been caused. *The Advocate General of Bengal* v. *Ranee Surnomoyee Dossee (1863), 9 Moo. I. A*, *387, 426*, *Ratcliffe* v. *Evans (1892), 2 Q. B.*, [illegible] Law of [illegible] le to this [illegible] BISWAS [illegible] Calc., 452; [s c, 5 C. W. N., 659

SMALL CAUSE COURT.

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS . I. L. R., 30 Calc., 627

SMALL CAUSE COURT, MOFUSSIL.

SMALL CAUSE COURT, MOFUSSIL—*continued.*

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS.

——jurisdiction of—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY. [I. L. R., 30 Calc., 713

See MUNSIF . I. L. R., 26 Mad., 212

See NORTH-WEST PROVINCES RENT ACT (XII OF 1881), ss. 42, 95 AND 206. [I. L. R., 24 All., 517

See REFERENCE TO HIGH COURT—CIVIL CASES . . I. L. R., 25 All., 135

See RES JUDICATA—COMPETENT COURT—SMALL CAUSE COURT CASES.

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD . . I. L. R., 28 Calc., 235

1. JURISDICTION.

[illegible] diction to award damages, under s. 491 of the Civil Procedure Code, to a defendant whose property has been attached on insufficient grounds. IBRAHI ROWTHEN *v.* SANGARAM SHETTY (1902) [I. L. R., 26 Mad., 504

2.—**Damages**—*Provincial Small Cause Courts Act (IX of 1887), Sch. II—Suit for damages for* [illegible]

[illegible] ised his tenants to enjoy all his rights, and the tenants covenanted not to cut trees growing on the estate. The landlord's rights included the right to cut certain green trees for his own use and certain other green trees for agricultural purposes, as well as all trees planted by himself, at his option; and he was further entitled to take and use all decayed and fallen [illegible]

SMALL CAUSE COURT, MOFUSSIL—*continued.*

1. JURISDICTION—*continued.*

instance, and no objection was raised, either there or on appeal, as to the competency of that Court to entertain it. The District Munsif passed a decree in plaintiff's favour for a portion of the amount claimed, which was increased by Rs. 1-8-0 by the Subordinate Judge, on appeal. Upon a civil revision petition being filed in the High Court: *Held* that the suit was one for damages for breach of covenant, and as such was cognizable by a Court of Small Causes, and that the Court in which it had been instituted had no jurisdiction to entertain it. RAMASAMY CHETTIAR *v.* ORR (1903) [I. L. R., 26 Mad., 176

3.—Immovable property—*Act IX of 1887 (Provincial Small Cause Courts Act), Sch. II, cls (13) and (31)—Small Cause Court*—The plaintiff claimed, as land-owner, to be entitled to receive the rents or fees paid by shopkeepers for the temporary occupation, during a fair, of a piece of land, which, the plaintiff alleged, belonged to his *mahal*. He further alleged that the defendant, claiming that the land was his, had wrongfully received those dues or rents *Held* that this was a suit which fell within the provisions of the latter part of cl (*31*) of the second Schedule to Act IX of 1887, and was not within the cognizance of a Court of Small Causes. *Damodar Gopal Dikshit* v. *Chintaman Balkrishna Karve (1892), I. L. R., 17 Bom., 42*, referred to. RAMESHAR SINGH *v* DURGA DAS (1901) [I. L. R., 23 All., 437

4.—Maintenance—*Act IX of 1872 (Indian Contract Act), s 23—Consideration opposed to public policy—Parents making profit for themselves out of the marriage of their daughter—Small Cause Court suit—Act IX of 1887 (Provincial Small Cause Courts Act), Sch. II, cl (38).*—The parents of a girl caused her to enter into an utterly unsuitable marriage, the husband agreeing to pay a certain sum monthly for the maintenance of the parents. On suit by the mother to recover certain instalments of the maintenance so promised, it was *held* (1) that the suit was one not cognizable by a Court of Small Causes; and (2) that the agreement was one which was opposed to public policy, and ought not to be enforced. *Bhagvantrao* v *Ganpatrao (1891), I L R, 16 Bom, 267; Dholidas Ishvar* v. *Fulchand Chhagan (1897), I L R, 22 Bom., 658;* and *Visvanathan* v. *Saminathan (1889), I. L. R., 13 Mad, 83*, referred to BALDEO SAHAI *v.* JUMNA KUNWAR (1901) [I. L. R., 23 All., 495

5.—Mesne profits—*Nature of suit—Appeal—Provincial Small Cause Courts Act (IX of 1887), Sch II, cl. (31)*—The plaintiff purchased certain land in June, 1892, at a sale in execution of a decree against *R* He did not obtain formal possession until June, 1894. The defendant was in actual possession of the land, under an alleged private sale by *R* to him in October, 1892. The plaintiff now sued the defendant for mesne profits for three years, *viz.*, from 1894 to 1896, alleging that they had been wrongfully received by the defendant. *Held* that the suit fell within the exception of cl (*31*) of Sch. II to the Provincial Small Cause Courts Act (IX of 1887), and was not of a nature cognizable by Courts of Small Causes, and that, therefore, an appeal lay to the District Court from the Court of the Subordinate Judge. ANTONE *v.* MAHADEV ANANT (1900) [I. L. R., 25 Bom., 85

6. ———— *Civil Procedure Code (Act XIV of 1882), s 586—Suit of a nature cognizable in a Court of Small Causes—Suit for mesne profits—Second appeal—Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. (31).*—A suit for mesne profits is not a suit for an account, but a suit for damages, and is not exempted from the jurisdiction of the Small Cause Courts under cl (*31*) of Sch. II to the Provincial Small Cause Courts Act. There is no second appeal from a decision in such a suit. SUBBA RAO *v.* SITARAMAYYA (1900) . I. L. R., 24 Mad., 118

7. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. (31)—Dispossession of plaintiff from immovable property by defendant under decree—Receipt by defendant of profits—Decree reversed on appeal—Suit by plaintiff to recover profits wrongfully received by defendant while in possession—Suit not cognizable by Small Cause Court*—Defendant obtained a decree against plaintiff for possession of certain immovable property, in execution of which defendant took possession of the property. Plaintiff appealed against the decree, which was reversed. While defendant was in possession, he received profits from the property amounting to a sum less than R500 Plaintiff now sued in the Court of Small Causes to recover this sum as profits which had been wrongfully received by defendant: *Held* that the suit was not cognizable by a Court of Small Causes. *Subba Rao* v. *Sitaramayya, I. L. R., 24 Mad., 118; Seshagiri Ayyar* v. *Marakathammal, I. L. R, 23 Mad 196*, and *Kunjo Behary Singh* v *Madhub Chundra Ghose, I. L R., 23 Calc, 884*, considered. SAVARIMUTHU *v* AITHURUSU ROWTHAR (F B, 1901) . I. L. R., 25 Mad., 103

8.—Rent—*Provincial Small Cause Courts Act (IX of 1887), s 15, Sch. II, cl (8)—Suit for rent, with cross-demand for value of improvements—Jurisdiction of Small Cause Court*—Plaintiff sued to recover arrears of rent due by defendants, and also prayed that the value of improvements due to the defendants might be made liable for the claim. *Held* that the suit was one for rent, and triable by a Court of Small Causes. KARUNAKARA KURUP *v.* MUNIPPRAVAN (1901) [I. L. R., 24 Mad., 356

9.—Title, Question of—*Provincial Small Cause Courts Act (IX of 1887), s 23—Claim to possession of land when title to land disputed—Second appeal—Civil Procedure Code (Act XIV of 1882), s 586—Practice*—The plaintiff sued to recover R75 as the *vipan* (income) of certain lands,

SMALL CAUSE COURT, MOFUSSIL—*continued.*

1. *JURISDICTION—continued.*

In his defence the defendant raised the question of the title to the land. The plaintiff obtained a decree, which was confirmed in appeal. *Held* that the suit, although raising the question of title, was a suit cognizable by a Small Cause Court, and that, therefore under *s.* 586 of the Civil Procedure Code (Act XIV of 1882), no second appeal lay. VINAYAK GANGADHAR BHAT *v.* KRISHNARAO SAKHARAM ADHIKARI (1901) . . I. L. R., 25 Bom., 625

10. ———— *Provincial Small Cause Courts Act (IX of 1887), s. 23—Question of title—Return of plaint—Jurisdiction of Civil Court—Declaration of title—Civil Procedure Code (Act XIV of 1882), s. 586—Appeal.*—Where a plaint, having been returned by the Small Cause Court under s. 23 of the Provincial Small Cause Courts Act, was presented to the Munsif's Court, together with a petition asking the Court to come to a decision on the question of title, but there was no prayer for declaration of title to the land, nor did the plaintiff offer to pay any further court-fee: *Held* that the question of title could not be decided finally in such a suit, and that the lower Appellate Court had no jurisdiction to make a declaratory decree for title *Also*, that a second

11.—Trusts—*Act IX of 1887 (Provincial Small Cause Courts Act), Sch. II, cl. (18)—Small Cause Court suit—Suit relating to a trust—Suit to recover money paid to legal practitioner to institute suits, but not so expended—*

COMMERCIAL BANKING CORPORATION *v.* MUHAMMAD ISMAIL KHAN (1901) . I. L. R., 24 All., 208

12. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. (18)—Suit for money borrowed by a trustee from his co-trustees out of moneys belonging to the trust estate—"Suit relating to a trust"—Jurisdiction of Small Cause Court.*—One of several trustees of a charity personally borrowed from other trustees some moneys belonging to the estate of the charity, and gave a promissory note therefor The other trustees subsequently instituted a suit in the Small Cause Court to recover the amount: *Held* that the suit was not one "relating to a trust," within the meaning of cl. (18) of Sch. II to the Provincial Small Cause Courts Act, and that the Small

SMALL CAUSE COURT, MOFUSSIL—*continued.*

1. *JURISDICTION—concluded.*

Cause Court had jurisdiction to try it. SUNDARALINGAM CHETTI *v.* MARIYAPPA CHETTI (1902) [I. L. R., 26 Mad., 200

13. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. (18)—Suit relating to a trust—Appointment of plaintiff under trust deed on a salary—Suit for unpaid salary—Jurisdiction of Small Cause Court.*—By a deed of trust, the settlor vested a press in trustees, with the object of conducting a newspaper, and appointed plaintiff as editor and manager, on a fixed salary. Plaintiff acted, but subsequently resigned. On a suit being brought by plaintiff, on the Small Cause side of the Subordinate Judge's Court, to recover the amount due to him by way of salary between the date of the trust deed and that of his

14.—Wrongful distraint—*Provincial Small Cause Courts Act (IX of 1887), s. 15, Sch. II, cl. 35 (j)—Compensation for illegal distress—Civil Procedure Code (Act XIV of 1882), s. 586—Second appeal—Limitation Rent Recovery Act (Madras Act VIII of 1865), s. 78—Cause of action complete on date of illegal distress.*—A plaint alleged that plaintiffs had for long cultivated certain land as tenants under defendant, that they had raised a crop of paddy, measuring about 6 *garces*, and stored it in three heaps on the land, that one of the plaintiffs had paid all the *kist* that was due to defendant, but that defendant had taken unlawful possession of two of the heaps of

24 Mad., 339, distinguished. PAMU SANYASI *v.* ZAMINDAR OF JAYAPUR (1901) [I. L. R., 25 Mad., 540

2. PRACTICE AND PROCEDURE.

15.—*Jurisdiction—Small Cause Suit—Subordinate Judge invested with Small Cause jurisdiction*

SMALL CAUSE COURT, MOFUSSIL— *concluded.*

2. PRACTICE AND PROCEDURE—*concluded.*

—*Small Cause suit tried by a Subordinate Judge under his ordinary jurisdiction—Appeal.*—Where a Subordinate Judge invested with Small Cause jurisdiction tried a Small Cause suit under [illegible]

SMALL CAUSE COURT, PRESIDENCY TOWNS—

See SANCTION FOR PROSECUTION—

POWER TO GRANT SANCTION ; [I. L. R., 27 Bom., 130

REVOCATION OF SANCTION. [I. L. R., 27 Bom., 130

——Act XV of 1882, s. 20—

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT. [I. L. R., 26 Bom., 235

——Calcutta—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN ACT II OF 1888), s. 135 [6 C. W. N., 480

——jurisdiction of—

See ARBITRATION - AWARDS—VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE I. L. R., 30 Calc., 397

See ATTACHMENT—SUBJECTS OF ATTACHMENT—TRUST PROPERTY [I. L. R., 28 Calc., 574

——jurisdiction over—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL. [I. L. R., 29 Calc., 498

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s 622 [7 C. W. N., 843 I. L. R., 30 Calc., 588

——practice and procedure; new trial—

See WITHDRAWAL OF SUIT. [I. L. R., 29 Calc., 239

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION.

(a) BREACH OF PROMISE OF MARRIAGE.

1.—*Madras City Civil Court Act (VII of 1892), s. 3—Suit for "breach of promise of marriage"—Contract of marriage, between intended bridegroom and parent of intended bride—Cognizable by Small Cause Court—Presidency Small Cause Courts Act (XV of 1882), s. 19 (q).*—The phrase "breach of promise of marriage," which occurs in cl (q) of s. 19 of [illegible]

the marriage, and not between an intended bridegroom and the parent of the intended bride. By s. 3 of the Madras City Civil Court Act, 1892, jurisdiction is conferred upon the City Civil Court to try all suits of a civil nature except, *inter alia*, suits cognizable by the Small Cause Court. By s 19, cl. (q), of the Presidency Small Cause Courts Act, the Small Cause Court has no jurisdiction to entertain suits for compensation for breach of promise of marriage. A suit was filed in the City Civil Court for compensation for breach of promise of marriage; but the contract alleged to have been broken had been entered into between the parent of the intended bride and the intended bridegroom. *Held* that the Court had no jurisdiction, inasmuch as such a suit was not exempted from the jurisdiction of the Small Cause Court MUHAMMAD ASHRUFF HUSSAIN SAHEB *v.* MUHAMMAD ALI (1901) [I. L. R., 24 Mad., 652

(b) IMMOVABLE PROPERTY

2.—*Small Cause Courts Act (XV of 1882), s 41—Mortgage—Mortgage sale—Ejectment—Suit, brought by purchaser at mortgage sale, to eject* [illegible]

mortgagee through whom he (the plaintiff) claimed. *Held* that the case did not come within s. 41, and that the Small Cause Court had no jurisdiction to try the suit. A purchaser at a mortgage sale does not claim through the mortgagee, for the purpose of s. 41 of the Small Cause Courts Act (XV of 1882). That section deals with the right to recover possession, rather than with title, and consequently the derivative claimant must establish that his right to possession is the same as that which was vested in

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*concluded.*

(*b*) IMMOVABLE PROPERTY—*concluded.*

his predecessor (the mortgagee). But the purchaser's right to recover possession is one which came into existence for the first time when he became absolute owner of the property. It is one which was not vested in the mortgagee, so that, though his present right to recover possession came into existence by virtue of something done by the mortgagee, it cannot be said that it passed from the mortgagee to him. Therefore, so far as relates to the purchaser's present right to recover possession, the mortgagee is not a person through whom the purchaser claims. CHABILDAS LALLUBHOY *v.* MOWJI DAYAL (1901)
[I. L. R., 26 Bom., 82

2. PRACTICE AND PROCEDURE.

(*a*) NEW TRIAL.

3.—*Presidency Small Cause Courts Act (XV of 1882, as amended by Act I of 1895), s. 38—New trial of contested cases—Application to set aside order returning suit dismissed for default of* [illegible]

[illegible] [I. L. R., 26 Mad., 166]

4.—*Jurisdiction of Registrar.*—The Registrar of the Presidency Small Cause Court has no jurisdiction to entertain an application for new trial to set aside an *ex parte* decree made by him for default. HALADHAR MAITI *v.* CHOYTONNA MAITI (1903)
[I. L. R., 30 Calc., 588 ;
s.c., 7 C. W. N., 547

(*b*) REFERENCE TO HIGH COURT.

5.—*Presidency Small Cause Courts Act (XV of 1882), ss 69, 70—Contingent judgment—Security for the amount of the judgment and the costs of reference—Time for furnishing such security—Power to extend time to furnish the* [illegible]

[illegible] upon the opinion of the High Court, and a reference was made to the High Court, under s. 69 of the Presidency Small Cause Courts Act The defendants, at whose request the contingent judgment was given, did not fully deposit the amount of the judgment and the costs of the reference until November 14, 1900. A preliminary objection having been taken to the hearing of the reference, on the ground that it was not properly before the Court : *Held* that, as security for the amount of the judgment and the costs of the reference was not furnished "at once," as required by s. 70 of the Presidency Small Cause

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

(*b*) REFERENCE TO HIGH COURT—*concluded.*

Courts Act, the preliminary objection must prevail, and that the reference must be dismissed, the defendants paying the costs of the reference. *Fornaro v. Ramnarain Sookdeb (1875), 14 B. L. R., 180,* discussed. *Quære*—whether there is any power in the High Court to extend the time for furnishing such security. JUGAL KISSORE *v.* SEWMUK ROY (1901) . . . I. L. R., 28 Calc., 260

6.—*Presidency Small Cause Courts Act (XV of 1882), s. 69—Conditions imposed upon Judge of Small Cause Court in stating case for opinion—Civil Procedure Code (Act XIV of 1882), ss. 617 and 621—High Court, power of—Amendment—Remand.*—Before the High Court can give an [illegible]

[illegible] to the lower Court for amendment. GARLING *v.* SECRETARY OF STATE FOR INDIA (1903)
[I. L. R., 30 Calc., 458

(*c*) REHEARING.

7.—*Small Cause Court—Presidency Small Cause Courts Act (XV of 1882), ss 9 and 38—Decision by a single Judge on evidence—Reversal of decree by Full Court—Jurisdiction—Practice.*—One of the Judges of the Presidency Small Cause Court at Bombay having dismissed the plaintiff's suit on the evidence, the decree of the Judge was reversed by the Full Court (composed of two Judges), as being manifestly against the weight of the evidence, on an application by the plaintiff under s. 38 of the Presidency Small Cause Courts Act (XV of 1882). A question arose as to whether the decision of the Full Court was *ultra vires* and void, there being nothing in the rules framed under s. 9 of the Act providing for the exercise by the Full Court, composed of two or more Judges, of any powers conferred on the Small Cause Court. *Held* that, although the Rules of procedure and practice of the Presidency Small Cause Court at Bombay were silent as to the exercise by the Full Court, consisting of more than one Judge, of any powers under the Act, it did not follow that the sittings of the Full Court were therefore *ultra vires.* Although no rules were framed as to the procedure to be followed, still, by long practice, the procedure had become well-defined and fully known, the practice being that the Full Court should consist of two Judges—the Chief Judge, and in his absence the senior Judge, presiding. The Judge against whose decree any application is made is generally the second member, if he is present in Court. If he is absent, the Chief Judge and the

SMALL CAUSE COURT, PRESIDENCY TOWNS—*concluded.*

2. PRACTICE AND PROCEDURE—*concluded.*

(c) REHEARING—*concluded.*

second, or the Chief and any other Judge, hear and dispose of the application. Such being the unwritten rules of practice, they must be deemed to be "Rules treated as in force in the Court on 31st December, 1894," under cl. (2) of s 9 of the Act, and to be validly in force. They fall within the principle that an inveterate practice amounts to a rule of law. *Held, further,* that the power to alter, set aside or reverse the decree under s 38 of the Act includes the power of the Full Court to pass a decree in favour of the party in whose favour the application is granted. The practice of the Court of Small Causes at Bombay, of reviewing the decree in cases in which the notes of evidence are sufficient to enable the Full Court to undertake that review, and of setting aside a wrongful dismissal of the suit where the decision is manifestly against the weight of evidence, is not contrary to law. BEHRAM KAIKHUSHRU IRANI *v* ARDESHIR KAVASJI (1903)

[I. L. R., 27 Bom., 563

SOLICITOR.

See ATTORNEY.

See ATTORNEY AND CLIENT

SOMAJ.

See BRAHMO SAMAJ.

SONTHAL PARGANAS JUSTICE REGULATION (V OF 1893).

——s. 15—

See SANCTION FOR PROSECUTION—REVOCATION OF SANCTION

[I. L. R., 30 Calc., 916

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872).

See PARTITION—RIGHT TO PARTITION—PARTITION OF PORTION OF PROPERTY.

[5 C. W. N., 185

SPECIAL OR SECOND APPEAL.

SPECIAL OR SECOND APPEAL—*continued.*

See COURT FEES ACT, s 28.

[I. L. R., 25 Mad., 380

——application of rule that notice to agent binds principal—

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS

[L. R., 29 I. A., 203

——errors of law or procedure; remand—

See REMAND—CASES OF APPEAL AFTER REMAND . I. L. R., 28 Calc., 324

——non-exclusion from limitation period of time spent in prosecuting—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 29 Calc., 626

——orders subject or not to appeal—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s 622

[5 C. W. N., 192

——plea urged for the first time in—

See RAILWAY COMPANY

[I. L. R., 27 Bom., 597

——Small Cause Court suits; title, question of—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TITLE, QUESTION OF.

——under Bengal Tenancy Act—

See BENGAL TENANCY ACT, s 13

[6 C. W. N., 190
7 C. W. N., 591

See RES JUDICATA—ADJUDICATIONS;

[I. L. R., 28 Calc., 471

COMPETENT COURT — REVENUE COURTS . 5 C. W. N., 798

1. ORDERS SUBJECT OR NOT TO APPEAL.

1.—Arrears of rent—*Suit—Act X of 1859, ss 23, 77, 153, 160, 161—Act VIII of 1859, ss. 284, 372—Chota Nagpur Landlord and Tenant Procedure Act (Bengal Act I of 1879), ss. 37, 144*—A second appeal lies to the High Court from an appellate decree of the District Judge in a suit for

SPECIAL OR SECOND APPEAL—*continued*

1. ORDERS SUBJECT OR NOT TO APPEAL—*continued.*

[illegible]

[I. L. R., 28 Calc., 532; s.c., 5 C. W. N., 279

2.—**Compensation for illegal notices**—*Provincial Small Cause Courts Act (IX of 1887), s. 15, Sch. II, cl. 35 (j)—Civil Procedure Code (Act XIV of 1882), s 586—Second appeal—Limitation—Rent Recovery Act (Madras Act VIII of 1865), s 78—Cause of action complete on date of illegal distress.*—A plaint alleged that plaintiffs had for long cultivated certain land as [illegible] raised a crop [illegible] stored it in [illegible] the plaintiffs [illegible] defendant, but that defendant had taken unlawful possession of two of the heaps of paddy, measuring about 5 *garces*, under the pretext that he had distrained them The prayer was for an order directing defendant to deliver to plaintiffs about 5 *garces* of grain, worth R250 at R50 per *garce*, in respect of the two heaps of paddy of which he had taken unlawful possession The distraint was made on 25th January, 1896, and the suit was instituted on 25th July of the same year:—*Held* that the suit was in substance one for compensation for illegal distress or attachment, and not for the recovery of specific property, and that, in consequence, it was not a suit of the nature cognizable by a Court of Small Causes, and a second appeal lay. *Held, also,* that [illegible]

3.—**Decision of Sub-Judge, where no appeal lies to him**—*Appeal—Second appeal from decision of Sub-Judge when no appeal lies to him, if maintainable—Decree on an award—Civil Procedure Code (Act XIV of 1882), ss. 540, 562, 622.*—When no appeal lies to the Subordinate Judge, a second appeal to the High Court does not lie from his decision. When, therefore, a decree was passed by the Munsif upon an award, and an appeal was preferred to the Subordinate Judge, who set aside the decree of the Munsif on the ground that the award was bad, and sent the case back for the trial of the case on the merits: *Held* that, the award being good and valid, no appeal lay to the Subordinate Judge, and no appeal lay to the High Court against his order, and the remedy lay under s. 622, Civil Procedure Code. GANGA CHARAN ROY *v.* SASTI MANDAL (1901) . . . 6 C. W. N., 614

4.—**Discretion of Court**—*Appeal—Civil Procedure Code, s 564—Indian Limitation Act (XV of 1877), s. 5.*—*Held* that no second appeal will lie where a Court of first appeal has disallowed the appellant's plea of excuse for not having filed his [illegible]

5.—**Order absolute for foreclosure**—*Second Appeal—Civil Procedure Code (Act XIV of 1882), ss 244 and 588—Decree, execution of.*—When an order absolute for foreclosure of mortgaged property has been made, any question that arises afterwards as to that order absolute is not a question relating to the execution of a decree, within the meaning of s 244 of the Civil Procedure Code. Therefore no second appeal lies from an order disposing of such a question. *Akikunnissa Bibee v. Roop Lall Dass (1897), I. L. R., 25 Calc., 133,* referred to. TARA PADO GHOSE *v.* KAMINI DASSI (1901)

[I. L. R., 29 Calc., 644

6.—**Order as to costs.**—A second appeal lies, as to costs, against an appellate decree BHUGOBATI PAL *v.* MAHOMED ALI (1903) . 7 C. W. N., 647

[illegible] within the meaning of s 2 of the Civil Procedure Code, and therefore no first or second appeal lies therefrom. *Jagarnath Singh v. Budhan (1895),* [illegible]

ROY (1901) . . . I. L. R., 29 Calc., 60

8.—**Order passed in appeal under Civil Procedure Code, s. 588**—*Civil Procedure Code (Act XIV of 1882), ss 493, 588—Order by Munsif,* [illegible] the District Judge, who set aside his order and remanded the petition to the Munsif Against this

SPECIAL OR SECOND APPEAL—*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL—*concluded.*

order the counter-petitioner preferred an appeal to the High Court: *Held* that every order passed in an appeal under s 588 is final, and that no appeal lay. VENKATAPATHI NAIDU *v* TIRUMALAI CHETTI (1901) . . . . I. L. R., 24 Mad., 447

9.—Order setting aside sale in execution of decree—*Bengal Tenancy Act (VIII of 1885), s. 153—Landlord and tenant—Suit for rent, order in—Order setting aside a sale—Rent decree valued at less than* R100—*Execution of decree—Civil Procedure Code (Act XIV of 1882), ss 244, 588 (16).*—No appeal lies from an order passed by a District Judge, setting aside a sale in execution of an *ex parte* decree for rent valued at less than one hundred rupees *Shyama Charan Mitter* v. *Debendra Nath Mukerjee (1900), I. L. R, 27 Calc, 484,* followed. *Semble*—An order setting aside a sale is as much an order relating to the execution of a decree as an order confirming a sale. MONMOHINI DASI *v.* LAKHINARAIN CHANDRA (1900)

[I. L. R., 28 Calc., 116

10.————————*Civil Procedure Code (Act XIV of 1882), ss. 244 (c), 311, 312, 588—Fraud, allegation of*—No second appeal lies from an order setting aside a sale under s 312, Code of Civil Procedure, although an allegation of fraud is made in the application for setting aside the sale, when no attempt is made to substantiate the allegation *Rojoni Kant Bagchi* v. *Hossain Uddin Ahmed (1899), 4 C. W. N, 538,* discussed and explained. *Nava Kumar Roy* v *Golam Chunder Dey, I. L R, 18 Calc, 422, Abhoya Dassi* v. *Pudmo Luchun Mandol, I. L. R. 22 Calc, 802,* and *Daivanayogam Pillai* v *Rangusami Aiyar, I L R, 19 Mad, 29,* followed UMAKANTA ROY *v* DINO NATH SANYAL (1900) . . . . I. L. R., 28 Calc., 4;

[s.c., 5. C. W. N., 124

11.—Rate of rent—*Bengal Tenancy Act (VIII of 1885), s 153 Appeal—Second appeal—Rent suit—Pleadings*—In a suit for rent for less than R100, the defendant pleaded that he was the tenant, not of the plaintiffs but of some other persons, at a rate lower than that claimed in the suit. No issue was raised as to the rate of rent, and the lower Court merely decided that the defendant was plaintiffs' tenant, and decreed the suit *Held* that, the question of the rate of rent not having been raised and decided, no second appeal lay BAIDYA NATH BAHARA *v* DHON KRISHNA SIRKAR (1900)

[5 C. W. N., 515

2. SMALL CAUSE COURT SUITS

(a) MESNE PROFITS

12.—*Civil Procedure Code (Act XIV of 1882), s 586—Suit of a nature cognizable in a Court of Small Causes—Suit for mesne profits—Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. (31)*—A suit for mesne profits is not a suit for an account, but a suit for damages, and is not

SPECIAL OR SECOND APPEAL—*continued.*

2. SMALL CAUSE COURT SUITS—*concluded.*

(a) MESNE PROFITS—*concluded.*

exempted from the jurisdiction of the Small Cause Courts under cl (31) of Sch. II to the Provincial Small Cause Courts Act. There is no second appeal from a decision in such a suit. SUBBA RAO *v.* SITARAMAYYA (1900) . I. L. R., 24 Mad., 118

(b) RENT.

13.—*Civil Procedure Code (Act XIV of 1882), s. 586—Suit of a small cause nature—Plaint based on muchalka, but containing prayer as for the enforcement of a charge*—In a suit filed in a Munsif's Court, the plaintiff, a *zamindar*, alleged that first defendant, a tenant on his estate, had executed a *muchalka*, which was registered, in respect of certain lands, and that second defendant was in possession of the lands, and that default had been made in the payment of the *kist* referred to in the *muchalka.* The plaint contained no other allegations, but prayed for a decree for the arrears of *kist*, and concluded with a prayer as for the enforcement of a charge in respect of the *kist* *Held* that the plaint must be read as one for the enforcement of the terms of the *muchalka*, and that the suit was therefore of a small cause nature, and no second appeal lay. *Mullapudi Balakrishnayya* v. *Venkatanarasimha Appa Rau, I. L R, 19 Mad, 329,* followed. HARISCHANDRA DEO *v.* NARAYANA (1901)

[I. L. R., 24 Mad., 508

(c) TITLE, QUESTION OF.

14.—*Small Cause Court, jurisdiction of—Provincial Small Cause Courts Act (IX of 1887), s 23—Claim to possession of land, when title to land disputed—Civil Procedure Code (Act XIV of 1882), s 586—Practice*—The plaintiff sued to recover R75 as the *utpan* (income) of certain lands. In his defence the defendant raised the question of the title to the land The plaintiff obtained a decree, which was confirmed in appeal. *Held* that the suit, although raising the question of title, was a suit cognizable by a Small Cause Court, and that, therefore, under s 586 of the Civil Procedure Code (Act XIV of 1882), no second appeal lay. VINAYAK GANGADHAR BHAT *v.* KRISHNARAO SAKHARAM ADHIKARI (1901) . I. L. R., 25 Bom, 625

3 GROUNDS OF APPEAL.

(a) QUESTIONS OF FACT.

15.—*Civil Procedure Code (Act XIV of 1882), ss. 584, 585—Second appeal—Finding of fact by lower Court*—One Ragho died prior to 1856, leaving a widow Anpurnabai, and one son Babaji, who was Anpurnabai's step-son. On Ragho's death, Anpurnabai took possession of the land in question in this suit, and mortgaged it several times. In 1879 she mortgaged it with possession to the father of the defendants Anpurnabai died in April, 1887, and in 1899, within twelve years after her death, the

SPECIAL OR SECOND APPEAL—*continued.*

3. GROUNDS OF APPEAL—*concluded.*

(a) QUESTIONS OF FACT—*concluded.*

plaintiffs, who were the sons of Babaji, filed this suit to recover the land. They alleged in the plaint that Anpurnabai had been granted this land by her step-son Babaji by way of maintenance for her life, and they contended that, therefore, their right of suit did not arise until her death. The defendants pleaded adverse possession. They contended that Anpurnabai had held adversely to Babaji and to his sons (the plaintiffs). No evidence was given by the plaintiffs of the alleged grant of the land to Anpurnabai for her life by way of maintenance. The lower Court dismissed the suit. On appeal, the District Judge reversed the decision and passed a decree for the plaintiffs. In his judgment he said: "The plaint states that Anpurnabai had this land for maintenance, and, in the complete absence of even the slightest information about Babaji and Ragho, [illegible] confirming [illegible] with which [illegible] ond appeal. [illegible] (1902)

[I. L. R., 26 Bom., 617

(b) EVIDENCE, MODE OF DEALING WITH.

16.—*Admission or rejection of evidence—Civil Procedure Code, ss. 584, 568—Appeal—Admission of additional evidence in appeal—Discretion of Court.*—The refusal by an Appellate Court to exercise the discretion vested in it by s. 568 of the Code of Civil Procedure, with respect to the admission of additional evidence, would be an error or defect in procedure, within the meaning of s. 584 of the Code, because s. 568 distinctly implies that discretion must be exercised. But a refusal, in the exercise of discretion, to admit additional evidence is undoubtedly not such an error or defect. RAM PIARI *v.* KALU (1900) I. L. R., 23 All., 121

17.—*Error.*—An erroneous view of evidence involves an error of law. ISWAR CHUNDER SANTRA *v.* SATISH CHUNDER GIRI (1902)

[I. L. R., 30 Calc., 207; s.c., 7 C. W. N., 126

4. OTHER ERRORS OF LAW OR PROCEDURE.

(a) DISCRETION, EXERCISE OF.

18.—*Limitation Act (XV of 1877), s. 5—"Sufficient cause" for not presenting appeal within prescribed period—Interference with exercise of discretion by Appellate Court.*—A mere difference in view on the part of the High Court, as to the mode in which the discretion conferred by s. 5 of the Limitation Act ought to have been exercised by the lower Appellate Court in admitting an appeal, is in itself no ground of interference by the High Court. *Per* SIR ARNOLD WHITE, *C.J.* (MOORE, *J.*, concurring).—The test is, has the discretion been exercised after appreciation and consideration of all the facts which are material for the purpose of enabling the Judge to exercise a judicial discretion, and after the application of the right principle to those facts? If a discretion is exercised under [illegible] the facts [illegible] judicial [illegible] had app[illegible] tion was [illegible] during the period of delay,—not whether he had been misled by the Munsif, or whether his proceedings before the Collector were *bonâ fide.* *Per* BENSON, *J.*—There is a wide distinction between the law of limitation in respect of suits and in respect of appeals. The "sufficient cause," referred to in s. 5 of the Limitation Act, apparently means, not only those circumstances which are expressly recognized as extending time, but also such circumstances as are not expressly recognized, but which may appear to the Court to be reasonable. KICHILAPPA NAICKAR *v.* RAMANUJAM PILLAI (1901)

[I. L. R., 25 Mad., 166

(b) VALUATION OF SUIT.

19.—*Under-valuation of suit—Admissibility of objection on second appeal.*—The defendant in a suit raised the objection that its valuation was [illegible] that could be raised on second appeal. GOVINDA MENON *v.* KARUNAKARA MENON (1900)

[I. L. R., 24 Mad., 43

(c) PROCEDURE.

20.—*Civil Procedure Code (Act XIV of 1882), s. 584—Second appeal—Procedure.*—Case where in a second appeal the judgment of the lower Appellate Court was set aside on the ground that the procedure adopted by it in the trial of the case was not in accordance with law, which requires that all the facts and circumstances of the case should be taken into consideration. BHUPAT RAI *v.* KALI RAI (1901)

[6 C. W. N., 357

5. PROCEDURE IN SPECIAL APPEAL.

21.—*Civil Procedure Code (Act XIV of 1882), s. 584—Inferences of fact or of law.*—Case in which the High Court in second appeal reversed the judgment of the lower Appellate Court, and considered the inferences of facts and also certain facts found by the first Court and not displaced by the lower Appellate Court, which set aside the judgment of the former. In second appeal the High Court has the power of considering whether the procedure adopted by the lower Appellate Court in dealing with the

SPECIAL OR SECOND APPEAL—*concluded.*

5. PROCEDURE IN SPECIAL APPEAL—*concluded.*

facts is proper or not; and whether the inferences of fact or law derived by that Court from facts established to its satisfaction are well founded or not. PROTAP NARAIN SINGH DEB *v.* RAGHU RAM HAZRA (1901) . . . 6 C. W. N., 185

SPECIAL DAMAGE.

See RIGHT OF SUIT—OBSTRUCTION OF PUBLIC HIGHWAY.

See RIGHT OF WAY. 6 C. W. N., 197

See SLANDER . I. L. R., 28 Calc., 452

SPECIAL LEAVE TO APPEAL.

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.

SPECIAL POLICE OFFICER.

See POLICE ACT (V OF 1861), ss 17, 19. [I. L. R., 28 Calc., 411

SPECIFIC PERFORMANCE.

See ARBITRATION—AWARDS—ENFORCING AWARDS I. L. R., 23 All., 285
„ 24 All., 164

See COMPROMISE—CONSTRUCTION, ETC., OF DEEDS OF COMPROMISE. [7 C. W. N., 158

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM [L. R., 28 I. A., 221

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS. [6 C. W. N., 314

1. GENERALLY.

enforce specific performance ceases upon the death of the person with whom the contract is made, and

NATH MOOKERJEE *v.* KALI PROSAD JOHURI (1902) [I. L. R., 30 Calc., 265; s.c., 7 C. W. N., 229

SPECIFIC PERFORMANCE—*concluded.*

2. SPECIAL CASES.

2.—Agreement to lease—*Subsequent lease to third party taking in good faith without notice of agreement—Act I of 1877 (Specific Relief Act), s. 18.*—S agreed to lease certain immovable property to W for a term of fifteen years,

as enabled him to carry out his agreement, and that,

3.—Agreement to sell—*Act IX of 1872 (Indian Contract Act), s. 65—Act XV of 1877 (Indian Limitation Act), Sch. II, Art. 97—Suit for specific performance—Agreement declared unenforceable—Alternative claim for refund of consideration paid thereunder—Limitation.*—The defendants, against whom a decree for foreclosure was outstanding, agreed to sell certain immovable property to the plaintiff, and the plaintiff paid into Court, as part of the consideration, the amount due by the defendants under the foreclosure decree. The

was governed, as to limitation, by Art. 97 of the second Schedule to the Indian Limitation Act, 1877, and was not barred by limitation, inasmuch as limitation only began to run from the date of the High Court's decree declaring the agreement to sell

SPECIFIC RELIEF ACT (I OF 1877).

See VENDOR AND PURCHASER—INVALID SALES . I. L. R., 26 Bom., 159

——s. 9—

See APPEAL—EXECUTION OF DECREES—QUESTIONS IN EXECUTION. [I. L. R., 26 Mad., 428

See LIMITATION ACT, 1877, SCH. II, ART. 3 . . 7 C. W. N., 218

See POSSESSION—SUITS FOR POSSESSION. [I. L. R., 26 Mad., 514

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE. [I. L. R., 27 Bom., 302

See TITLE—MISCELLANEOUS CASES. [I. L. R., 25 Mad., 448

1.—*Hât—Suit to recover possession of a hât—Delivery of possession—Incorporeal right—Illegal dispossession* —A *hât*, the possession of which is held by collecting tolls or rents, is not "immovable property," within the meaning of s 9 of the [illegible]

[I. L. R., 29 Calc., 614

2.—*Constructive possession—Collusion by tenant with the trespasser—Refusal by the tenant to bring a suit—Right of suit* —S. 9 of the Specific Relief Act contemplates the case of a person who, being in physical possession of property, is dispossessed. So, where plaintiff was in constructive possession of a plot of land through his tenant, and the latter was dispossessed: *Held* that the plaintiff had no right to maintain a suit under s. 9 of the Specific Relief Act. *Held, further,* that plaintiff was not entitled to bring a suit, even where, subsequent to such dispossession, the tenant, in collusion with the person who dispossessed, refused to bring a suit. SONATON SHOME *v.* HELIM (1902) [6 C. W. N., 616

3.—*Civil Procedure Code, s. 43—Summary suit for possession Plaintiff restored to possession—Subsequent suit by plaintiff for mesne profits—Burden of proof*—One Lachmi Narain died possessed of certain immovable property. He left him surviving a widow, Mukhta Kunwar. Narain Das obtained possession of some portion of the said immovable property, as he alleged, under a lease from Mukhta Kunwar, and held possession, at any rate for some [illegible]

[illegible]

a suit against Sheo Kumar to recover mesne profits for the time during which he was out of possession As to this suit, it was *held* (1) that the suit was not liable to be defeated by reason of s. 43 of the Code

SPECIFIC RELIEF ACT (I of 1877)—*continued.*

——s. 9—*concluded.*

of Civil Procedure; and (2) that, as to the other issues arising in the suit, the first was, whether the defendant was the true owner of the property, the burden of proving which was on him; and, secondly, if the defendant established his title, whether the plaintiff had such an interest in the property, under the lease set up by him or otherwise, as would entitle him to remain in possession as against the defendant. SHEO KUMAR *v.* NARAIN DAS (1902) [I. L. R., 24 All., 501

——s. 18—

See SPECIFIC PERFORMANCE—SPECIAL CASES . . I. L. R., 23 All., 119

——s. 23, cl. (*b*)—

See SPECIFIC PERFORMANCE—GENERALLY. [I. L. R., 30 Calc., 265

————cl. (*c*)—

See COMPROMISE—REMEDY ON NON-PERFORMANCE OF COMPROMISE [5 C. W. N., 386

——s. 27—

See MORTGAGE—REDEMPTION—RIGHT TO REDEEM . I. L. R., 24 Mad., 449

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS. [6 C. W. N., 314

——s. 39—

See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE . I. L. R., 25 Bom., 10

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS. [L. R., 29 I. A., 203 I. L. R., 27 Bom., 607

See LIMITATION ACT, 1877, SCH. I, ART 91 . I. L. R., 27 Bom., 560

——s. 42—

See CLAIM TO ATTACHED PROPERTY. [I. L. R., 24 Mad., 20

See DECLARATORY DECREE, SUIT FOR—

SUITS CONCERNING DOCUMENTS; [L. R., 29 I. A., 203

ENDOWMENT; [I. L. R., 26 Mad., 450

MISCELLANEOUS SUITS. [I. L. R., 24 Mad., 275
,, 24 All., 170
,, 25 Mad., 504

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—SETTING ASIDE ALIENATIONS, AND WASTE. [5 C. W. N.,

——s. 45—

See HACKNEY-CARRIAGE ACT (BOM. VI OF 1863), s 6 [I. L. R., 27

SPECIFIC RELIEF ACT (I OF 1877)—*concluded.*

——s. 45—*concluded.*

See POLICE ACT (XLVIII OF 1860), ss. 11, 12 . . I. L. R., 26 Bom., 396

—Practice.—*Per* RUSSELL, *J.*—Under rule 577 of

——s. 53—

See INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R., 27 Bom., 357

—— s. 54—

See INJUNCTION—

UNDER CIVIL PROCEDURE CODE; [I. L. R., 27 Bom., 357

SPECIAL CASES—

BREACH OF AGREEMENT; [I. L. R., 26 Mad., 168

OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY [I. L. R., 26 Bom., 735

POSSESSION OF JOINT PROPERTY. [I. L. R., 29 Cal., 500

——s. 56—

See BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT III OF 1901), ss 82 (c) AND 86 . . I. L. R., 27 Bom., 403

See INJUNCTION—

UNDER CIVIL PROCEDURE CODE; [I. L. R., 27 Bom., 357

SPECIAL CASES — BREACH OF AGREEMENT; [I. L. R., 26 Mad., 168

—— s. 57—

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT. [I. L. R., 26 Mad., 168

SPLITTING CAUSE OF ACTION.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

SPLITTING OFFENCES.

See ROBBERY . . 5 C. W. N., 372

STAMP

See COURT-FEES ACT.

See STAMP ACT.

See VALUATION OF SUIT.

——deficiency in—

See LIMITATION ACT, 1877, s 4 [I. L. R., 27 Bom., 330

STAMP ACT (I OF 1879).

——s. 7—

—Instrument relating to "several distinct matters"—Consideration for lease being rent

STAMP ACT (I OF 1879)—*concluded.*

——s. 7—*concluded.*

payable each month and one month's rent

[illegible] Mad., 4[illegible]

——s. 16—

—"Stamped at the time of execution"—Stamp Act (II of 1899)—Affixing and cancelling stamp immediately after signature—Letters Patent, Art. 12—Part of the cause of action—Promissory note payable in Madras or Secunderabad—Payments of interest in Madras—Jurisdiction—A promissory note was executed in plaintiff's favour at Vizianagram, payable in Secunderabad or Madras Payments of interest due on the note were made in

——Sch. I, Art. 1—

—Limitation Act (XV of 1877), s 19, Exp. 1, Sch. II, Art 56—Acknowledgment of debt, unstamped—Tankha—Stamp-duty—Evidence of debt.—The mere fact of a document being an acknowledgment of a debt, within the meaning of s. 19 of the Limitation Act, would not make it liable to a stamp-duty under Sch. I, Art 1, of Act I of 1879. There are other conditions required to be fulfilled, one of which being that it should be intended to supply evidence of a debt. *Binja Ram v. Rajmohun Roy (1881), I L. R, 8 Calc. 282;*

STAMP ACT (II OF 1899).

—Bill of Exchange—Sufficiency of stamp—Construction of instrument—In determining the question whether a particular instrument is

——ss. 3 and 7, and Sch. I, Art. 47, cl. A.—

See BILL OF LADING. [I. L. R., 30 Calc., 565

STAMP ACT (II OF 1899)—*continued.*

——s. 5—

—*Agreement with numerous landholders for mining rights—Community of interest—Stamp*—A Company, having obtained from the Secretary of State for India the right to search for and work minerals in a certain district, prepared an indenture with the object that it should be executed by numerous persons who were landholders and owners of surface and mining rights over the lands comprised in that district. By the indenture, each intended executant, for a consideration of one rupee and a royalty, granted to the company a license to prospect and work upon a piece of land belonging to him, and covenanted to sell or lease the mining rights over it, if required. The executant further covenanted to indemnify the Company from claims that might be made by other persons, and undertook not to sell the mining rights to any other person for fifty years: *Held* that the instrument was chargeable with the aggregate amount of the duties with which separate instruments relating to the same matter would be chargeable. Upon the face of it, the instrument dealt with several distinct matters, namely, with agreements with several persons with regard to their separate property; and the proper stamp to be affixed was an eight-anna stamp, or as many such stamps as there were separate landholders who were made parties to the agreement *Held, also,* that the instrument did not contain distinct agreements with any one *raiyat.* REFERENCE UNDER STAMP ACT, s. 57 (1900)

[I. L. R., 24 Mad., 176

——s. 5 and Sch. I, Art. 35—

—*Lease for three years, containing covenant by lessor to renew, at option of lessee, for a further*

s. 57 (1901) . . . I. L. R., 25 Mad., 3

——s. 7—

See ante, SS. 2 AND 7.

——s. 24 and Sch. I, Art. 23—

—*Conveyance—Havala—Letter by a debtor, authorising payment to his creditor of money due to him (the debtor) by a third person*—The defendant authorized the plaintiff, his creditor, to receive a sum of money on his behalf due to him by the Panjrapol authorities at Bhiwandi, by a letter which ran as follows:—"To The Daroga of the Panjrapol, Bhiwandi. I, Gau bin Halia of Khoni, beg to apply that I have completely fulfilled the agreement to supply fodder for *Samvat* year 1956, and that the sum of R22, due to me on

STAMP ACT (II OF 1899)—*continued.*

——s. 24 and Sch. I, Art. 23—*concluded.*

account, should be made over, on my behalf, to Shet

due to the latter, it fell within the definition of "conveyance" in the Indian Stamp Act (II of 1899), and should be stamped as such. NANDUBAI AYAL MANGALDAS BHANJI *v.* GAU BIN HALIA BAGAL (1902) . . . I. L. R., 27 Bom., 150

——ss. 32 and 57—

—*Reference to High Court—Determination by Collector, as to duty leviable, final—"Case"—Jurisdiction of High Court.*—An adjudication by a Collector, under the powers conferred on him by s. 31 of the Stamp Act, 1899, as to the duty with which an instrument is chargeable, is, by s. 32 of that Act, final, and such a case cannot be referred by the Revenue-authorities to the High Court, under s. 57 of the Stamp Act, for an adjudication. REFERENCE UNDER STAMP ACT, s 57 (1901)

[I. L. R., 25 Mad., 751

——s. 33—

—*Seizure of documents under search-warrant—Document that "comes" before a Magistrate.*—Complaint having been made against a person for having committed offences under ss. 64 (*c*) and 68 (*c*) of the Stamp Act, 1899, the Magistrate issued a search-warrant, under which certain documents were seized and impounded under s 33 (2)

the production of documents under a search warrant. KING-EMPEROR *v.* BALU KUPPAYYAN (1901)

[I. L R., 25 Mad., 525

——ss. 35 and 42—

—*Stamp—Penalty—Unstamped receipt*—In applying proviso (*b*) to s. 35 of Act II of 1899, the Court should not levy the duty of one anna as well as the penalty of one rupee; and, when a receipt is admitted in evidence under the proviso above referred to, it is not necessary that the receipt should be endorsed in the manner provided for in s. 42. REFERENCE UNDER S. 57 OF ACT II OF 1899 (F.B., 1902) . . I. L. R., 24 All., 374

——s. 37—

See post, SCH. I, ART. 1.

——s. 42—

See ante, SS. 35 AND 42.

——s. 57—

See ante, SS. 32 AND 57.

STAMP ACT (II OF 1899)—*continued.*

—s. 57—*concluded.*

—*Certificate by Deputy Collector under s. 40(1) (a), exempting document from stamp duty—Reference by Board of Revenue to High Court—Jurisdiction of High Court to decide the question* —A

s. 40 (1) (*a*), certified that they were exempt from stamp duty. The Inspector-General of Registration disagreed with the opinion formed by the Deputy Collector, and reported the matter to the Board of Revenue for orders. The Board of Revenue referred the question as to the stamp duty, if any, payable on the documents to the High Court, under s. 57 of the Act: *Held* (the Chief Justice dissenting) that the High Court had no jurisdiction to decide the question. REFERENCE UNDER STAMP ACT, S 57 (1901) . . . . I. L. R., 25 Mad., 752

—s. 69—

I. L. R., 24 Mad., 518

SCHEDULE I.

—Art. 1—

Sch.

India

1899,

postage stamp instead of a receipt stamp—Such stamp not "a stamp of sufficient amount but improper description"—S. 37 of the Indian

improper description" a description of stamp appropriate to purposes altogether outside the Stamp Act, but is confined to a stamp which is used for the purpose of denoting the stamp duty chargeable on an instrument, but which is improper in a particular

STAMP ACT (II OF 1899)—*continued.*

SCHEDULE I—*continued.*

—Arts. 1 and 5—

2.—*Acknowledgment — Stamp—Agreement.* — Plaintiff sued upon an acknowledgment passed by the defendant to the following effect:—"This day rupees two hundred and forty-one I received. The interest thereon is by agreement fixed to be at the rate of R¾ *per cent.* per month. This is the account in respect of the same." The acknowledgment bore an anna stamp. *Held* that the above acknowledgment was an agreement, and, as such, required an eight-anna stamp LAXUMIBAI *v.* GANESH RAGHUNATH (1900)

I. L. R., 25 Bom., 373.

—Art. 5—

—*Cl. (b)—Agreements to deliver goods in exchange for goods—Price*—Agreements or memoranda of agreements to deliver goods in

—Art. 23—

See ante, s 24 AND SCH. I, ART. 23.

See post, ARTS. 55, 23 AND 62 (*e*).

—Art. 24—

—*Copy—Extract—Account books—Civil Procedure Code (Act XIV of 1882), ss. 141A, 142A*—

—Arts. 32 and 40—

—*Mortgage—Further charge—Stamp*—Certain property was mortgaged, with possession, for R180, by a deed of mortgage dated 23rd May, 1895. The deed was on a stamp paper of R2 (two). On 23rd August, 1899, the same property was re-mortgaged to the same mortgagee for R250, made up of R180, the consideration for the former deed, and another sum of R70 due to the mortgagee. This second deed was written on a stamp paper of R1. *Held* that the second deed was not intended to operate merely

—Art. 35—

See ante, s 5 AND SCH I, ART 35.

—Art. 40—

See ante, ARTS. 32 AND 40.

—Art. 47, cl. *A*—

See ante, ss. 2 AND 7 AND SCH I, ART. 47, CL. A.

STAMP ACT (II OF 1899)—*concluded.*

SCHEDULE I—*concluded.*

——Art. 47, cl. *D*—

[illegible] *life* [illegible] of a [illegible] g to the rules and regulations of this society from time to time in force, insured your life in the class of this society at the age of .

"The name of Mr , residing at , has been registered as that of the person to whom the amount due under the rules of this society after your death should be paid." *Held* that the above certificate was a policy of life insurance, within the meaning of Art. 47, cl. D, of Act II of 1899, and as such liable to pay *ad valorem* duty. IN RE THE HIMAT PROVIDENT SOCIETY, LIMITED (1900) . . I. L. R., 25 Bom., 376

——Arts. 55, 23, and 62 (*e*)—

— *Stamp — Conveyance — Release — Document executed by a benami purchaser professing to relinquish in favour of the real purchaser any claims which he might have in virtue of the purchase.*—*Held* that a document, by means of which the certified purchaser of property sold by auction in execution of a decree purported to relinquish, in favour of a person whom he alleged to be the real purchaser of the property, any claims which he might have in respect of the property by reason of his being the certified purchaser thereof, was to be stamped as a release, according to Art. 55 of the first Schedule to the Indian Stamp Act, 1899. REFERENCE UNDER S. 57 OF ACT II OF 1899 (F.B., 1902) . . . I. L. R., 24 All., 372

——Art. 62—

See ante, ARTS. 55, 23 AND 62 (*e*).

STATUTE.

——13 Eliz., c. 5—

See TRANSFER OF PROPERTY ACT, S. 53.
[I. L. R., 25 Bom., 202
" 27 Bom., 146

——27 Eliz., c. 4—

See TRANSFER OF PROPERTY ACT, S. 53.
[I. L. R., 25 Bom., 202

——11 & 12 Vict., c. 21—

See INSOLVENT ACT.

——20 & 21 Vict., c. 55, s. 28—

See DIVORCE ACT (IV OF 1869), SS. 7, 11 AND 45 . . . 7 C. W. N., 504

——21 & 22 Vict., c. 106—

See CROWN LANDS.
[I. L. R., 26 Mad., 268

——22 & 23 Vict., c. 41—

See CROWN LANDS.
[I. L. R., 26 Mad., 268

STATUTE—*concluded.*

——24 & 25 Vict., c. 67—

See BOMBAY CITY IMPROVEMENT ACT.
[I. L. R., 27 Bom., 424

——24 & 25 Vict., c. 104—

————s. 7—

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER.
[I. L. R., 28 Calc., 709

————ss. 14, 15—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.
[I. L. R., 30 Calc., 588

————s. 15—

See REVISION, CRIMINAL CASES—GENERAL RULES FOR EXERCISE OF POWER.
[I. L. R., 24 All., 315

See WITNESS — CRIMINAL CASES—SUMMONING WITNESSES.
[I. L. R., 30 Calc., 508

——32 & 33 Vict., c. 29—

See CROWN LANDS
[I. L. R., 26 Mad., 268

——33 & 34 Vict., c. 59—

See CROWN LANDS.
[I. L. R., 25 Mad., 268

——37 & 38 Vict., c. 27—

————s. 3—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS.
[I. L. R., 25 Bom., 636

——44 & 45 Vict., c. 58—

See ARMY ACT, 1881.

——46 & 47 Vict., c. 52—

See INSOLVENT ACT (11 & 12 VICT., c. 21), S. 40 . I. L. R., 26 Bom., 623

——53 & 54 Vict., c. 27—

See ADMIRALTY OR VICE-ADMIRALTY JURISDICTION I. L. R., 29 Calc., 402

——55 & 56 Vict., c. 14—

————s. 5—

See BOMBAY CITY IMPROVEMENT ACT.
[I. L. R., 27 Bom., 424

——58 Vict., c. 7—

See ARMY (ANNUAL) ACT, 1895.

STATUTES, CONSTRUCTION OF.

See PREROGATIVE OF THE CROWN.

See SIGNATURE . I. L. R., 24 All., 319

——Codes—

See BENGAL TENANCY ACT (VIII OF 1885), S. 5 (5) . 6 C. W. N., 825

STATUTES, CONSTRUCTION OF— *concluded*

——distinction between enactments affecting vested rights and those regulating procedure—

See PROVIDENT FUNDS ACT, s. 4.
[I. L. R., 26 Mad., 440

——issue of orders before commencement of Statute—

See BENGAL IRRIGATION ACT, ss 1, 6
[I. L. R., 28 Calc., 487

——the ejusdem generis rule—

See MOOKTEAR.
[I. L. R., 29 Calc., 890

See PENAL CODE, s 216B
[I. L. R., 25 All., 261

See RENT, SUIT FOR.
[I. L. R., 28 Calc., 485

1.—**Codifying Statute.**—In dealing with the interpretation of an Act intended to codify a particular branch of the law, the proper course is, in the first instance, to examine the language of the Statute [illegible] the law previously stood. *Bank of England* v. *Vagliano (1891), L. R. Cr C., 107,* followed SARAT CHANDRA SHAH CHOWDHRY *v.* EMPEROR (1902)
[7 C. W. N., 301

2.—**Liberty of subject.**—In construing a Statute which affects the liberty of the subject, the Courts should not only adopt the natural and ordinary construction, but should construe strictly expressions occurring therein. BISSUMBHUR SINGH *v.* QUEEN-EMPRESS (1900) . . 5 C. W. N., 108

[illegible] *Calc., 649,* referred to LALA SURAJ PROSAD *v.* GOLAB CHAND (1901)
[I. L. R., 28 Calc., 517; s.c. 5 C. W. N., 640

STATUTORY POWERS.

See RAILWAY COMPANY.
[I. L. R., 27 Bom., 344

STAY OF EXECUTION.

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

See EXECUTION OF DECREE—STAY OF EXECUTION.

STAY OF PROCEEDINGS.

See ACCUSED PERSON.
[5 C. W. N., 110

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 44

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15.
[5 C. W. N., 781

See MORTGAGE—FORECLOSURE—RIGHT TO FORECLOSURE.
[6 C. W. N., 654

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE
[I. L. R., 30 Calc., 112

See PRACTICE—

CIVIL CASES—STAY OF PROCEEDINGS;

CRIMINAL CASES—STAY OF PROCEEDINGS.

——until trial of test case—

See PRACTICE—CIVIL CASES—TEST CASE . . I. L. R., 29 Calc., 140

STOCKS.

——confinement in—

See MADRAS REGULATION—1816—XI, s. 10 . . I. L. R., 24 Mad., 271

STOLEN PROPERTY.

See CHARGE TO JURY—SPECIAL CASE—STOLEN PROPERTY.

See STAMP ACT (II OF 1899), s. 69.
[I. L. R., 24 Mad., 319

1. OFFENCES RELATING TO.

—*Act XLV of 1860 (Indian Penal Code), ss. 224, 411—Escape from lawful custody—Actual thief arrested by private person whilst in possession of stolen property—S. 411 of the Indian Penal Code not applicable to the thief himself*—S. 411 of the Indian Penal Code does not apply to the person who is the actual thief. Where, therefore, a person, whose bullock had been stolen in his absence, traced it to the house of the thief, and there and then arrested him, and made him over to a *chaukidar*, from whose custody he escaped, it was *held* that this was not an escape from *lawful custody*, within the meaning of s. 224 of the Code. *Semble* that, if the owner of the bullock had himself been entitled to make the arrest, the subsequent custody of the prisoner by the *chaukidar* would have been a lawful custody. *Queen-Empress* v *Potadu (1888), I. L. R., 11 Mad., 480,* referred to. KING-EMPEROR *v.* JOHRI (1901) . . I. L. R., 23 All., 266

STOLEN PROPERTY—*concluded.*

2. DISPOSAL OF, BY THE COURT.

2.—*Criminal Procedure Code (Act V of 1898), s. 517—Disposal of stolen property on conviction of the thief—Babashahi coin—Legal tender—Customary coin*—A witness for the prosecution in a case of theft produced a sum of money in *Babashahi (Baroda)* coin (part of the stolen property), which the accused had paid to him in satisfaction of a debt. The accused was convicted, [illegible] right. The stolen coins were not current coin of the realm, and were neither by Statute nor by the law of merchants in British India legal tender. The property in them did not, therefore, pass by mere delivery, but remained in the complainant. *Collector of Salem (1873), 7 Mad. H. C. Rep., 233,* and *Empress v. Joggessur Mochi (1878), I. L. R., 3 Calc., 379,* distinguished. IN RE MATHUR LALBHAI (1901) . . I. L. R., 25 Bom., 702

STREET.

See PRIVATE STREET.

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE.

STRIDHAN.

See HINDU LAW—STRIDHAN.

STRIKING OFF PROCEEDINGS.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS.

SUB-LETTING.

See LANDLORD AND TENANT—TRANSFER BY TENANT . I. L. R., 29 Calc., 148 [6 C. W. N., 916, 919

See SALE FOR ARREARS OF RENT—INCUMBRANCES . I. L. R., 28 Calc., 205

SUBORDINATE JUDGE, JURISDICTION OF.

—*Act XII of 1887 (Bengal Civil Courts Act), s. 10—Jurisdiction—Act XII of 1881 (N.-W. P. Rent Act), s. 189—Powers of Subordinate Judge in charge of the office of the District Judge—Revenue Court appeal.*—*Held* that a Subordinate Judge in temporary charge, under s. 10 of Act XII of 1887, of the office of the District Judge, is competent to take up and decide Revenue Court appeals which may be pending on the file of the District Judge. RAHMAT ALI KHAN *v.* ABDULLA (F.B., 1901) . I. L. R., 23 All., 455

SUBORDINATE MAGISTRATE.

——refusal of, to take proceedings—

See MAGISTRATE—POWERS OF MAGISTRATES . I. L. R., 29 Calc., 242

SUBSTANTIAL INJURY.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—SUBSTANTIAL INJURY.

SUBSTANTIAL QUESTION OF LAW.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

SUBSTITUTION OF PARTIES.

See PARTIES—SUBSTITUTION OF PARTIES.

SUCCESSION.

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), ss. 4, 5. [I. L. R., 25 Bom., 470

See HINDU LAW—
- CUSTOM—INHERITANCE AND SUCCESSION;
- ENDOWMENT—SUCCESSION IN MANAGEMENT;
- INHERITANCE.

See INHERITANCE.

See MAHOMEDAN LAW—INHERITANCE.

See MALABAR LAW—INHERITANCE.

See RAJ, SUCCESSION TO.

——to istemrari mokurrari tenure—

See LEASE—CONSTRUCTION. [I. L. R., 30 Calc., 883

——to talukdari—

See OUDH ESTATES ACT (I OF 1869).

—*Nawab of Tonk—Primogeniture—Impartible estate—Special family custom—Effect of British settlement on tenure and its customs—Estates appurtenant to Nawabship of Tonk—Grant of villages by Nawab as maintenance*—*Held,* upon [illegible] said family custom. The appellant being grantee from the Government of a pension fund, part of an hereditary cash allowance originally granted to his father, and also grantee of a village from his father for his subsistence: *Held* that, these grants being

SUCCESSION—*concluded.*

[illegible]

[L. R., 30 I. A., 190; s.c. I. L. R., 30 Calc., 843

SUCCESSION ACT (X of 1865).

—s. 48—

See PARDANASHIN WOMEN. [5 C. W. N., 505

—s. 58—

See PROBATE—OF WHAT DOCUMENTS GRANTED . I. L. R., 29 Calc., 31

—s. 82—

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . . 5 C. W. N., 300

—s. 90—

See WILL—CONSTRUCTION. [I. L. R., 26 Mad., 433; 6 C. W. N., 321

—s. 94—

See WILL—CONSTRUCTION. [I. L. R., 26 Mad., 433

—s. 98—

—**Hindu law**—*Bequest to daughter and her sons from generation to generation—Testator* [illegible]

[illegible]

—s. 105—

See WILL—CONSTRUCTION. [6 C. W. N., 321; I. L. R., 26 Mad., 532

—s. 179—

See ADMINISTRATOR. [I. L. R., 27 Bom., 103

See EXECUTOR. [I. L. R., 27 Bom., 281

SUCCESSION ACT (X of 1865)—*concluded.*

—s. 181—

See ADMINISTRATION. [I. L. R., 26 Bom., 267

—s. 187—

See ADMINISTRATION. [I. L. R., 26 Bom., 267

—s. 190—

See REPRESENTATIVE OF DECEASED PERSON . . I. L. R., 30 Calc., 1044

—s. 240—

See LETTERS OF ADMINISTRATION. [I. L. R., 24 Mad., 120

See PROBATE—POWER OF HIGH COURT TO GRANT . I. L. R., 24 Mad., 120

—s. 246—

See LETTERS OF ADMINISTRATION. [I. L. R., 25 All., 355

—s. 269—

See ADMINISTRATOR. [I. L. R., 27 Bom., 103

—s. 331: "Hindu" includes Sikh—

See PROBATE AND ADMINISTRATION ACT (V OF 1881) . . 7 C. W. N., 895

SUCCESSION CERTIFICATE ACT (VII OF 1889).

See APPEAL—CERTIFICATE OF ADMINISTRATION (ACT VII OF 1889).

See CERTIFICATE OF ADMINISTRATION—ACT VII OF 1889.

—*Succession certificate—Succession Certificate Act (VII of 1889), object of*—The object of the Succession Certificate Act (VII of 1889) is to obtain the appointment of someone to give a legal discharge to debtors to the estate for the debts due, and not to have nice and intricate questions of law as to the rights of parties to the estate of the deceased decided on an application under it. GUNINDRA PROSAD *v.* JUGMALA BIBI (1903) . I. L. R., 30 Calc., 581

—ss. 6, 7 and 9—

[illegible] *of disput* [illegible] *proceeding* [illegible] *rtificate on* [illegible] *card—Minor* [illegible] rising under [illegible] *1889)* are to be determined by a summary proceeding, *i.e.*, by a short inquiry leading up to and resulting in a rapid decision, in contrast with the lengthy investigation which may be required for the more tardy determination of a regular suit. The nature of the inquiry must depend on the circumstances of each case. An application by a guardian of a minor is not contemplated by s. 6, cl. (*d*), of Act VII of 1889, which only permits the petitioner, who claims the right for himself, to

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*concluded.*

——ss. 6, 7 and 9—*concluded.*

. . . certificate . . . of 1889), the right . . .ld not be summarily disposed of: *Held* that the Judge ought to have decided the *primâ facie* right of the applicant under cl. 3 or cl 4 of s. 7 of the Act, without waiting to decide the issue raised as to the adoption. GULABCHAND GAMNAJI *v.* MOTI CHATRAJI (1900) . . I. L. R., 25 Bom., 523

——s. 7—

—*Nature of inquiry—Summary inquiry—Civil Procedure Code (Act XIV of 1882), s. 141.*—There must be an inquiry before a certificate is granted under the Succession Certificate Act; but the inquiry is to be a summary one; and, when a Judge has legal evidence before him on which he comes to a proper conclusion, his proceedings cannot be set aside because they seem not to have been of a very protracted nature. Such a decision does not in any way bar the rights of the parties, nor does it establish the right of the party to the debt to collect which the certificate is granted. *Hurri Krishna Panda* v. *Balabhadra Panda (1896), I. L. R., 23 Calc., 431; Radha Rani Dassi* v. *Brindabun Chundra Bosack (1897), I. L. R., 25 Calc., 320; Sivamma* v *Subbamma (1894), I. L. R., 17 Mad., 477; Dharmaya Sangappa* v. *Savana Malapa (1895), I. L. R., 21 Bom., 53*, referred to. JIGRI BEGUM *v.* SYED ALI NAWAB (1901) [5 C. W. N., 494

——s. 9—

See ante, ss. 6, 7 AND 9.

——ss. 10, 19—

See APPEAL—CERTIFICATE OF ADMINISTRATION . I. L. R., 25 Mad., 634

SUCCESSION (PROPERTY PROTECTION) ACT, 1841.

See ACT—1841—XIX.

SUDRAS.

See HINDU LAW—

INHERITANCE—ILLEGITIMATE CHILDREN;

PARTITION—RIGHT TO PARTITION—ILLEGITIMATE CHILDREN. [I. L. R., 25 Mad., 429

SUIT.

See ABATEMENT OF SUIT.

See CONTRIBUTION, SUIT FOR

See DISMISSAL OF SUIT.

See EJECTMENT, SUIT FOR.

See JURISDICTION—SUITS FOR LAND.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

SUIT—*continued.*

See PAUPER SUIT.

See PRACTICE—CIVIL CASES—OPENING CASE FOR DEFENDANT. [I. L. R., 29 Calc., 32

See RIGHT OF SUIT.

See VALUATION OF SUIT.

——adjustment of—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION [7 C. W. N., 180

——by or against Receiver—

See RECEIVER. [I. L. R., 30 Calc., 593

——change in form of—

See PLAINT—AMENDMENT OF PLAINT.

See VARIANCE BETWEEN PLEADING AND PROOF.

——for administration—

See HINDU LAW—REVERSIONERS—ADMINISTRATION SUIT BY. [I. L. R., 29 Calc., 260

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 I. L. R., 29 Calc., 315

——for false imprisonment—

See FALSE IMPRISONMENT. [I. L. R., 30 Calc., 872

——for money charged on immovable property—

See LIMITATION ACT, 1877, SCH. II, ART. 132

——for possession—

See LIMITATION ACT, 1877, SCH. II, ART. 14 . I. L. R., 29 Calc., 367

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES. [I. L. R., 29 Calc., 682

——institution of—

See LIMITATION ACT, s 4.

——restoration of—

See CIVIL PROCEDURE CODE, s. 99.

——revival of—

See PARTIES—SUBSTITUTION OF PARTIES.

——to enforce registration—

See REGISTRATION ACT (III OF 1877), s. 77 . . I. L. R., 30 Calc., 532

——to recover possession of immovable property—

See DOCUMENT. [I. L. R., 30 Calc., 433

SUIT—*concluded*

——to recover surplus sale-proceeds—

See LIMITATION ACT, 1877, SCH. II, ART. 29 . I. L. R., 30 Calc., 440

SUITS VALUATION ACT (VII OF 1887).

See VALUATION OF SUIT.

——s. 11—

See APPELLATE COURT—GENERAL DUTY OF APPELLATE COURT [I. L. R., 25 All., 174

SUMMARY PROCEDURE.

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON.

See SUCCESSION CERTIFICATE ACT, SS 6, 7 AND 9 . I. L. R., 25 Bom., 523

SUMMARY TRIAL.

See CRIMINAL PROCEEDINGS. [5 C. W. N., 252

See FALSE CHARGE. [I. L. R., 28 Calc., 251

1.—**Complaint disclosing facts constituting offence of a graver nature**—*Process, issue of—Trial for minor offences—Magistrate, jurisdiction of—Illegality—Criminal Procedure Code (Act V of 1898), s. 260.*—Where the complaint [illegible] ... commission of a much more serious offence than the offences for which the Magistrate had held a summary trial [illegible] ... he should hold a regular trial BISHU SHAIK *v.* SABER MOLLAH (1902)

[I. L. R., 29 Calc., 409; s.c., 6 C. W. N., 713

2.—**Record of reasons for conviction**—*Code of Criminal Procedure (Act V of 1898), s. 263 (h)—Omission of Magistrate to* [illegible] ... C. W. N., 40

SUMMING UP EVIDENCE.

See CHARGE TO JURY.

SUMMONS.

See WITNESS—

CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES; [I. L. R., 24 Mad., 200

CRIMINAL CASES—SUMMONING WITNESSES.

SUMMONS, SERVICE OF.

——on juror—

See JURY—JURY IN SESSIONS CASES. [6 C. W. N., 887

1.—**Ex parte decree**—*Civil Procedure Code, ss. 89, 100, 104—Appeal—Service of summons on defendant residing out of British India—Burden of proof.*—Where a defendant, against whom an *ex parte* decree has been passed, appeals against that decree, it is sufficient in the first instance to establish that in the Court which passed the *ex parte* decree the necessary proof of service of summons on the defendant was not given by the plaintiff. It is not incumbent on the appellant to show that the summons was in fact not duly served. [illegible] ... sufficient to show that the summons was posted, but there must be some evidence of its having been received by the defendant. S. 100 of the Code of Civil Procedure is not limited in its application to defendant's residing within British India. FAKHR-UD-DIN *v.* GHAFUR-UD-DIN (1900) [I. L. R., 23 All., 99

2.——*Civil Procedure Code, ss. 80, 108—Application to set aside a decree passed ex parte—Irregular service of summons.*—Where a serving officer finds [illegible] ... he must make further efforts to effect personal service. SAKINA *v.* GAURI SAHAI (1902) [I. L. R., 24 All., 302

SUPERINTENDENCE OF HIGH COURT.

See SECURITY FOR GOOD BEHAVIOUR. [6 C. W. N., 583

——Charter Act (24 & 25 Vict., c. 104), s. 15—Criminal cases—

See CRIMINAL PROCEDURE CODE, s. 146. [I. L. R., 29 Calc., 382

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE. [I. L. R., 28 Calc., 418

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES. [I. L. R., 30 Calc., 508

SUPERINTENDENCE OF HIGH COURT—*continued.*

——Civil Procedure Code, s. 622—

See APPEAL—ARBITRATION.
[I. L. R., 29 Calc., 167

See ATTACHMENT—SUBJECTS OF ATTACHMENT—TRUST PROPERTY.
[I. L. R., 28 Calc., 574

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888), s. 135.
[6 C. W. N., 480

See COMPROMISE—CONSTRUCTION, ENFORCEING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.
[I. L. R., 30 Calc., 613

See DECREE—ALTERATION OR AMENDMENT OF DECREE.
[I. L. R., 24 Mad., 646

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.
[I. L. R., 25 Bom., 631

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[6 C. W. N., 614

——criminal cases—

See REVISION—CRIMINAL CASES.

CIVIL PROCEDURE CODE, S 622.

1.—**Arbitration**—*Award—Setting aside an award on ground of misconduct—Civil Procedure Code (Act XIV of 1882), ss. 521 and 622—Practice—Procedure.*—Where an award, made under Chapter XXXVII of the Civil Procedure Code

the Civil Procedure Code. It is an interlocutory order, and may be a ground of appeal against the decree passed in that suit. DAMODAR TRIMBAK DHARAP *v.* RAGHUNATH HARI (1902)
[I. L. R., 26 Bom., 551

2.—**Counsel and client**—*Suit by client to recover fees paid to counsel—Cause of action—Status of a barrister practising as an advocate in*

dismissed the suit, holding that such a suit could not lie. On appeal, the District Judge held that the suit would lie, and gave the plaintiff a decree. Against this decision the defendant applied in revi-

SUPERINTENDENCE OF HIGH COURT—*continued.*

CIVIL PROCEDURE CODE, S. 622—*continued.*

11 Mad., 220; and *Chenbasapa v. Lakshman*

3.—**Duty of High Court.**—Where it appears that the Court of first instance, or of appeal, has exercised a jurisdiction not vested in it by law, the High Court is bound to interfere under its revisional powers. RAMASAMY CHETTIAR *v.* OBR (1902)
[I. L. R., 26 Mad., 176

4.—**Order amending a decree**—*Civil Procedure Code (Act XIV of 1882), ss. 206, 622, 623—Appeal—Second appeal—Review.*—An order under s 206, Civil Procedure Code, amending a decree, is not a decree; and no appeal lies against such an order. The proper remedy is by an application under s 622, Civil Procedure Code. *Surta v. Ganga (1885), I. L. R., 7 All., 875*, referred to and followed. *Joy Kishen Mookherjee v. Ataoor Rohoman (1880), I. L. R., 6 Calc., 22*, referred to *Kali Prosunno Basu v. Lal Mohun*

5.—**Power of High Court**—*Code of Civil Procedure (Act XIV of 1882), ss. 310A, 622—"Exercised a jurisdiction not vested in it by law", meaning of—Appeal.*—Whether an order under s. 310A is subject to appeal or to revision under s. 622, Civil Procedure Code, depends upon the circumstances of each particular case. Where the purchaser is the decree-holder himself, and the question arises between him and the judgment-debtor, *Chundi Charan Mandal v. Banke*

Court can interfere under s 622, Civil Procedure Code, as the order is not merely an erroneous order but is made without jurisdiction. KEDAR NATH SEN *v.* UMA CHARAN (1900) . 6 C. W. N., 57

SUPERINTENDENCE OF HIGH COURT—*continued.*

CIVIL PROCEDURE CODE, S. 622—*continued.*

6. ———— *Revision, High Court's power of, without application—Property, management of, by Court*.—Under the terms of s 622, Civil Procedure Code, the High Court can deal with a case under that section without there being any application by any of the parties. *Golam Mahammad v Saroda Mohan Maitra (1900), 4 C W. N, 695,* approved of. There is no law or procedure under which a Court can, on the mere application of the parties interested, take over the management of properties belonging to an estate, and pass such orders as would place them entirely beyond the reach of the judgment-creditors of the estate. PURAN MAL *v.* JANKI PERSHAD SINGH (1901)

[I. L. R., 28 Calc., 680; s.c., 6 C. W. N., 114

7. ———— *Criminal Procedure Code (Act V of 1598), ss 435, 439—Jurisdiction of High Court, under Criminal Procedure Code, to revise order according sanction which has been granted by a Civil Court*.—The High Court has no jurisdiction, under ss. 45 and 439 of the Code of Criminal Procedure, to vise an order passed by any Court other than a Criminal Court under cl. (*b*) or (*c*) of sub-s (*1*) of s 195 of the Code of Criminal Procedure, according sanction to institute a prosecution; or an order passed under sub-s. (*6*) of s 195 revoking or refusing to revoke a sanction which has been given, or granting a sanction which has been refused. It may be open to the High Court, under s. 622 of the Code of Civil Procedure, to revise such proceedings of a Civil Court, in cases which come within the terms of that section. IN RE CHENNANAGOUD (1902)

[I. L. R., 26 Mad., 139

8.—Religious Endowments Act (XX of 1863), s. 5—*Vacancy in office of manager—Appointment by Civil Court—Jurisdiction of High Court to entertain petition to revise order appointing manager*.—An order made by a Civil Court under the powers conferred by s 5 of the Religious Endowments Act is a judicial adjudication in the matter before it, and it is competent to the High Court to entertain a civil revision petition against such an order. GOPALA AYYAR *v* ARUNACHALLAM CHETTY (1902) . I. L. R., 26 Mad., 85

9. ———— s. 18—*Leave to sue granted on application made by unverified letter and not presented to Court by applicant or pleader—Validity—Civil Procedure Code (Act XIV of 1882), ss. 622, 647—Maintainability of civil revision petition against order granting leave passed with material irregularity*.—Applications to District Courts, under s. 18 of the Religious Endowments Act, for leave to sue should be duly verified, and presented either by the applicant in person or by his pleader. A grant of such leave on an unverified application not presented in Court is a material irregularity, within the meaning of s 622 of the Code of Civil Procedure, and a civil revision petition lies from the order granting it. Omission to give notice of such an application to the person whom it is intended to sue does not of itself render the leave, if granted, irregular. *Venkatappayya v. Venkatapathi, Appeal No. 230 of 1895, I. L. R., 24 Mad, 687,* approved. AMDOO MIYAN *v.* MUHAMMAD DAOUD KHAN (1901)

[I. L. R., 24 Mad., 685

10.—Restriction on High Court's jurisdiction.—The High Court cannot interfere under s. 622 of the Code unless it is satisfied that the lower Court has acted in the exercise of its jurisdiction illegally. *Amir Hassan Khan v. Sheo Baksh Singh (1884), I. L. R, 11 Calc., 6,* referred to. KALI CHARAN SIRDAR *v* SARAT CHUNDER CHOWDHRY (1903)

[I. L. R., 30 Calc., 397; s.c., 7 C. W. N., 545

11.—Right of vakil to appear on Original side—*Rule IV A, Part I, Chap II, of the Rules of the High Court—Rule 71, Belchambers' Rules and Orders (2nd Ed.)—Revisional powers of the High Court in its Original jurisdiction—Appellate jurisdiction—Right of vakil to appear on the Original side*.—A vakil has no right to appear on the Original side, in an application under s. 622 of the Civil Procedure Code, to move against any order of the Presidency Small Cause Court. Such revisional powers, when exercised by the Original side of this Court, fall within and form a part of its Ordinary Original civil jurisdiction. RE APPLICATION OF A VAKIL OF THE APPELLATE SIDE (1903)

[7 C. W. N., 843

12.—Small Cause Court—*Jurisdiction—High Court, power of, to review orders passed without jurisdiction in the Presidency Small Cause Court—Bench consisting of the Chief Justice and another Judge—Charter Act (24 & 25 Vict., c 104), ss. 14, 15—Registrar—Presidency Small Cause Court, jurisdiction of—Ex parte decree for default—Rules 63, 70, 92, 94 (framed by the High Court) under s 9 of the Presidency Small Cause Courts Act (I of 1895)*.—By virtue of the power conferred under s. 14 of the Charter Act (24 & 25 Vict. c. 104), the Chief Justice, by constituting a Division Court consisting of himself and any other Judge of the High Court, can deal with applications against an order made by the Presidency Small Cause Court. *Shamsher Mundul v. Ganendra Narain Mitter (1902), I. L. R, 29 Calc, 498,* explained. The Registrar of the Presidency Small Cause Court has no jurisdiction to entertain an application for new trial to set aside an *ex parte* decree made by him for default. HALADHAR MAITI *v.* CHOTTONNA MAITI (1903)

[I. L. R., 30 Calc., 588; s.c., 7 C. W. N., 547

13.—Succession—*Succession (Property Protection) Act (XIX of 1841), ss. 3, 5, 6—Appointment of curator—Omission to take evidence before making order—Want of jurisdiction—Material irregularity*.—On an application, under Act XIX of 1841, to recover possession of the properties of a deceased *zamindar* by summary suit, and for the appointment of a curator pending the determination of the suit, the District Judge

SUPERINTENDENCE OF HIGH COURT—*concluded.*

CIVIL PROCEDURE CODE, S. 622—*concluded.*

omitted to examine the complainant or inquire further under s. 3 of the Act but called for a report from the Collector under s 8, and on receipt thereof made an order under s. 5 appointing a curator. *Held* (SUBRAHMANIA AYYAR, J., dissenting) that the order must be set aside, under s. 622 of the Code of Civil Procedure. The Judge was bound to hold an enquiry under s 3 before appointing a curator under s 5. The provisions of s 3 are mandatory, [illegible] WHITE, [illegible] with [illegible] —The [illegible] with material irregularity. KRISHNASAMI PANNIKONDAR *v* MUTHUKRISHNA PANNIKONDAR (1901)

[I. L. R., 24 Mad., 364

SUPREME COURT, CALCUTTA.

——Charter of 1726—

See SLANDER.

[I. L. R., 28 Calc., 452

SURETY.

See RECOGNIZANCE TO APPEAR.

See RECOGNIZANCE TO KEEP PEACE.

See SECURITY FOR GOOD BEHAVIOUR.

——discharge of—

See ABATEMENT OF SUIT.

[I. L. R., 25 All., 206

See RES JUDICATA—CAUSES OF ACTION—CONTINUING GUARANTEE

[I. L. R., 27 Bom., 418

——execution against—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.

[I. L. R., 26 Mad., 258

——liability of—

See GUARANTEE.

[I. L. R., 28 Calc., 597

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS.

[I. L. R., 25 Bom., 606

——position of legal practitioner becoming—

See MOOKTEAR . . 7 C. W. N., 281

1. LIABILITY OF SURETY.

1.—Death of judgment-debtor—*Civil Procedure Code (Act XIV of 1882), ss. 336, 349—*

SURETY—*continued.*

1. LIABILITY OF SURETY—*concluded.*

Release of judgment-debtor on finding a surety for his production at a specified time—Death of judgment-debtor before the expiration of that time—Release of surety—Execution of decree as against [illegible]

[illegible]

2.—Insolvency—*Civil Procedure Code (Act XIV of 1882), s 336—Surety undertaking that judgment-debtor should apply to be declared an insolvent—Application in insolvency by judgment-debtor—Subsequent failure to appear—Release of surety.*—E became surety for a judgment-debtor, undertaking to produce the judgment-debtor in Court when called upon, and that he should apply to be [illegible]

3.—Production of judgment-debtor—*Civil Procedure Code (Act XIV of 1882), s. 336.*—Where a surety enters into a bond, under s. 336 of the Code [illegible]

(1902) [illegible]

2. ENFORCEMENT OF SECURITY.

4.—Mode of enforcement—*Liability, mode of enforcing—Civil Procedure Code (Act XIV of 1882), ss 545-546.*—The mode of enforcing payment by a surety who has rendered himself liable under [illegible]

5. —————— *Execution of decree—Security bond—Mortgage—Sale of mortgaged property—Civil Procedure Code (Act XIV of 1882), s. 545—Transfer of Property Act (IV of 1882),*

SURETY—*continued.*

2. ENFORCEMENT OF SECURITY—*concluded.*

given in security, without instituting a suit under s. 67 of the Transfer of Property Act. SHYAM SUNDAR LAL v. BAJPAI JAINARAYAN (1903) [I. L. R., 30 Calc., 1060; s.c., 7 C. W. N., 914

3. DISCHARGE OF SURETY.

6.—Administration—*Probate and Administration Act (V of 1881), ss 51 and 78—Surety bond, power of a District Court to take a second—Administratrix, mal-administration of the estate by—Contract Act (IX of 1872), s 130—Application by a surety, who is not a beneficiary, to be discharged from his suretyship.*—Under the Probate and Administration Act (V of 1881), a District Court, after once having taken a bond with sureties, has jurisdiction to take a second bond with fresh sureties, if the necessity arises A surety (who is not a beneficiary) for the administratrix of an estate can, so far as relates to the future, by giving notice, be released from his obligation as surety on account of maladministration of the estate by the administratrix. S 130 of the Contract Act (IX of 1872) applies to such a case. RAJ NARAIN MOOKERJEE v. FUL KUMARI DEBI (1901) . I. L. R., 29 Calc., 68; [s.c., 6 C. W. N., 7

7.—Insolvency—*Civil Procedure Code (Act XIV of 1882), s. 336—Surety that judgment-debtor will apply to be declared insolvent—Due application by judgment-debtor.*—Where a surety entered

8.—Limitation—*Act IX of 1872 (Indian Contract Act), ss. 134 and 137—Creditor allowing*

SURETY—*concluded.*

3. DISCHARGE OF SURETY—*concluded.*

[I. L. R., 24 All., 504

SURRENDER.

——of tenancy—

See BENGAL TENANCY ACT, 1885, s. 86. [I. L. R., 28 Calc., 256

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT OR SURRENDER OF TENANCY.

——of lease—

See TRANSFER OF PROPERTY ACT, s. 118. [6 C. W. N., 905

SURVEY ACT.

See BENGAL SURVEY ACT.

SURVIVORSHIP.

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

SWINGING.

——by hooks—

See RASH AND NEGLIGENT ACT. [5 C. W. N., 376

T

TAHSILDAR.

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY, OR OTHERWISE. [I. L. R., 24 Mad., 121

TALUKDAR.

See GUJARAT TALUKDARS ACT (BOM. ACT VI OF 1888). [I. L. R., 26 Bom., 757

See OUDH ESTATES ACT.

TANK.

See LAND ACQUISITION (I OF 1894), s 23. [I. L. R., 28 Calc., 152

TAX.

——legality of—

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 63 . I. L. R., 24 Mad., 195

TAX—*concluded.*

——liability of Government to—

See MADRAS CITY MUNICIPAL ACT, S. 341. [I. L. R., 25 Mad., 457

——liability to—

See MADRAS DISTRICT MUNICIPALITIES ACT—

S. 53 AND SCH. A, PROVISO 4; [I. L. R., 24 Mad., 644

S. 63 I. L. R., 25 Mad., 627

SCH. A. I. L. R., 25 Mad., 747

——suit for injunction to restrain levy of—

See BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT III OF 1901), SS. 82 (c) AND 86 . I. L. R., 27 Bom., 403

——suit to recover, illegally levied—

See MADRAS DISTRICT MUNICIPALITIES ACT, SS. 53 AND 262. [I. L. R., 24 Mad., 205

See MADRAS LOCAL BOARDS ACT, SS. 57, 64 AND 149. [I. L. R., 24 Mad., 114

—*Municipality—Levy of house-tax—House valuation—Fair selling value—Absence of mala fides, perversity or manifest error—Civil Courts—Jurisdiction*—In the absence of proof of *mala fides*, perversity or manifest error, Civil Courts ought not to interfere with the house valuation made by a Municipality for the purpose of taxation, unless there is a breach of the rules prescribed by law for making the valuation. KASANDAS RAGHUNATHDAS *v.* ANKLESHVAR MUNICIPALITY (1901) I. L. R., 26 Bom., 294

TEHSILDAR.

See TAHSILDAR

TEMPLE.

——suits concerning—

See ACT—1863—XX.

See HINDU LAW—ENDOWMENT.

See MAHOMEDAN LAW—ENDOWMENT.

TENANCY.

See LANDLORD AND TENANT

——sub-division of—

See BENGAL TENANCY ACT, S 88 [6 C. W. N., 823

TENANCY IN COMMON.

See HINDU LAW—

INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP; [I. L. R., 26 Bom., 445

TENANCY IN COMMON—*concluded*

See HINDU LAW—*concluded.*

PARTITION—RIGHT TO PARTITION—WIDOW. [I. L. R., 24 Mad., 441

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY. [I. L. R., 25 Bom., 248

TENANT.

See JOINT TENANCY.

See LANDLORD AND TENANT.

——for life, apportionment of rent after death of—

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY. [I. L. R., 26 Mad., 540

——improvement by—

See CO-SHARER—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY . . I. L. R., 28 Calc., 223

TENDER.

See CONTRACT ACT (IX OF 1872), S. 51. [I. L. R., 30 Calc., 865

See LEGAL TENDER.

——by money order—

See EXECUTION OF DECREE—MODE OF EXECUTION—INSTALMENTS. [I. L. R., 24 All., 85

——of patta—

See MADRAS RENT RECOVERY ACT—

SS. 3 AND 80; [I. L. R., 26 Mad., 589

S. 4; I. L. R., 26 Mad., 363

S. 10; I. L. R., 25 Mad., 613

S. 11. I. L. R., 26 Mad., 456

TENURE.

See MOKURARI ISTEMRARI TENURE.

——and raiyati holding; distinction between—

See BENGAL CESS ACT, S. 4. [5 C. W. N., 535

——incidents of—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT. [7 C. W. N., 203

——interest on arrears of rent of—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT. [I. L. R., 29 Calc., 674

TENURE—*concluded.*

——service—

See GHATWALI TENURE.

See SERVICE TENURE.

——transfer of—

See BENGAL TENANCY ACT, ss. 65 AND 188. [I. L. R., 29 Calc., 219

——what constitutes—

See BENGAL TENANCY ACT (VIII OF 1885), s. 5 (5) . . . *6 C. W. N.*, 825

TEST CASE.

See PRACTICE—CIVIL CASES—TEST CASE.

TESTATOR.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT . . 6 C. W. N., 306

See HINDU LAW—WILL.

See MAHOMEDAN LAW—WILL

See WILL.

THEFT.

See STOLEN PROPERTY.

1.—Corpse—*Act XLV of 1860 (Indian Penal Code), s. 378—Human body not capable*

2.—Fish—*Penal Code (Act XLV of 1860), s. 379—Removal of a fish from an ordinary irrigation tank—Charge of theft—Maintainability of charge.*—Fish in an ordinary irrigation tank are not in the possession of any person, so as to be capable of being the subject of theft. Nor does the removal of such fish constitute any other offence. *Queen* v. *Revu Pothadu, I. L. R., 5 Mad., 391n*, and *Bhagiram Dome* v. *Abar Dome, I. L. R., 15 Calc., 388*, referred to. SUBBA REDDI *v.* MUNSHOOR ALI SAHEB (1900) . . I. L. R., 24 Mad., 81

THEFT—*concluded.*

goods train, a van on the train, in which four railway coolies were travelling, was searched. The property missed was not found, but, hidden under a heap of clothing belonging to the four coolies, were discovered 10 *thans* of cloth, which, on investigation, were ascertained to have been abstracted from the next van. *Held* that none of the four coolies travelling in the van where the 10 *thans* of stolen cloth were found could be convicted of the theft of the cloth, in the absence of evidence to connect one or more of them individually with the possession of the cloth. KING-EMPEROR *v.* ALI HUSAIN (1901) [I. L. R., 23 All., 306

THUMB IMPRESSIONS.

—*Assault to deter public servant from discharge of*

it is necessary that a gesture or preparation should be made by a person which would cause another to apprehend that the *person was about to use criminal* force to him then and there. A preparation taken with words which would cause him to apprehend that criminal force would be used to him, if he persisted in a particular course of conduct, does not amount to an assault. Where a *surveillé*, on a domiciliary visit being paid to him by a police officer, refused to

KHALIFA *v.* EMPEROR (1902) [I. L. R., 30 Calc., 97; s.c., 6 C. W. N., 342

TITLE.

See CLAIM TO ATTACHED PROPERTY.

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 28 Calc., 693

See POSSESSION—SUITS FOR POSSESSION. [5 C. W. N., 234 I. L. R., 26 Mad., 514

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

TITLE—*continued.*

—abstract of, not corresponding with original—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY . **I. L. R., 30 Calc., 468**

—decision of Revenue Court as to—

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

—declaration of; suit for—

See DECLARATORY DECREE, SUIT FOR.

—denial of—

See CO-SHARER—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY. **[I. L. R., 28 Calc., 223**

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

—inquiry into—

See BENGAL PRIVATE FISHERIES PROTECTION ACT . . **6 C. W. N., 113**

—proof of—

See LANDLORD AND TENANT—NATURE OF TENANCY . **I. L. R., 28 Calc., 738**

See ONUS OF PROOF—POSSESSION, AND PROOF OF TITLE.

See POSSESSION—EVIDENCE OF POSSESSION.

—question of—

See REGISTRAR OF HIGH COURT—SALE BY REGISTRAR . **5 C. W. N., 593**

See RES JUDICATA—

ESTOPPEL BY JUDGMENT; **[6 C. W. N., 66**

COMPETENT COURT—

SMALL CAUSE COURT CASES; REVENUE COURTS

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TITLE, QUESTION OF.

See SMALL CAUSE COURT PRESIDENCY TOWNS—JURISDICTION—IMMOVABLE PROPERTY.

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURTS SUITS—TITLE, QUESTION OF.

1. EVIDENCE AND PROOF OF TITLE.

1.—Evidence Act, 1872, s. 32 (5) (6)—*Title as reversionary heirs—Proof of pedigree—Admission of relationship—Actual reversioners not bound by acts of contingent reversioners.*—*Held* that the appellants had, in the absence of counter-evidence, sufficiently proved their title, as reversionary heirs to the estate of the deceased, by oral evidence of reputed common descent, admissible under Act I of 1872, s. 32, sub-s (5), and by documentary evidence, that his widow had recognised fifty years before suit, under conditions, that her husband's heirs were entitled to succeed her, and that she was not prepared to contest the claim of the appellant's predecessor to be such heirs. Those conditions were not binding on the appellants, who claimed in their own right, and were not bound by [illegible]

2. MISCELLANEOUS CASES.

2.—Suit for land—*Specific Relief Act (I of 1877), s 9—Suit for land, based on title—* [illegible] —Plaintiff sued to eject defendants from certain land, claiming title to it by [illegible] dis[illegible] both [illegible] title [illegible] been [illegible] plai[illegible] but [illegible] wise than by due course of law, by defendants, within six months prior to the institution of the suit. He considered that s. 9 of the Specific Relief Act applied, and declared plaintiff entitled to possession, but dismissed the suit in so far as it claimed to have plaintiff's title established. *Held* that, inasmuch as the suit had not been brought under the special provisions of the Specific Relief Act, but was based on plaintiff's superior title, a claim to title being also set up in defence, the issue concerning title should have been tried. The suit ought not to have been treated partly as a suit under s 9 and partly as based on plaintiff's title. *Ram Harak Rai v Seodihal Joti, I. L. R., 15 All, 384*, not followed. RAMASAMI CHETTI *v.* PARAMAN CHETTI (1901) **[I. L. R., 25 Mad., 448**

3.—Occupancy rights—*Limitation Act (XV of 1877), Sch. II, Art. 139—Claim for more than twelve years by tenants from year to year of permanent occupancy rights, to knowledge of landlord—Determination of lease.*—A person who has lawfully come into possession of land as tenant from year to year for a term of years, or as mortgagee, cannot, by setting up, during the continuance of such relation, any title adverse to that of the landlord or mortgagor, as the case may be, inconsistent with the real legal relation between them—and that however notoriously and to the knowledge of the other party—acquire, by the operation of the

TITLE—*concluded.*

2. MISCELLANEOUS CASES—*concluded.*

law of limitation, title as owner, or any other title inconsistent with that under which he was let into possession. In the case of a mortgage, the title of the mortgagor will be extinguished only at the expiration of the period prescribed for the redemption of the mortgage, and, in the case of a lease, the landlord's title can be extinguished only at the expiration of the period prescribed by Art. 139 of Sch II to the Limitation Act, and under that article such period will commence to run only when the tenancy is determined SESHAMMA SHETTATI *v* CHICKAYA HEGADE (1902) . . I. L. R., 25 Mad., 507

TITLE-DEEDS.

——possession of—

See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF.
[I. L. R., 29 Calc., 793

TOLLS.

——recovery of dues under lease of—

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 269 . I. L. R., 26 Mad., 475

TORT.

See DAMAGES—SUITS FOR DAMAGES—TORT

See MINOR—CUSTODY OF MINORS.
[I. L. R., 25 Bom., 574

TORT-FEASORS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS

TOUT.

See LEGAL PRACTITIONERS ACT, 1879, s. 36 . . . 6 C. W. N., 289
[I. L. R., 26 Mad., 596

TRADE-MARK.

1.—**Importer**—*Rights of importer of goods bearing manufacturer's or producer's trade-mark—Contract by importer for exclusive supply of goods—False statement in trade-mark—Deception—Evidence—Admissibility of judgment of Foreign Court—Evidence Act (I of 1872), s. 3—cl. 4, and s 42—Parties—Joinder of parties—Civil Procedure Code (Act XIV of 1882), ss 27, 31, 32 and 34—Practice.*—The plaintiff, an importer and seller of watches, sued to restrain the defendants from importing into or selling in Bombay or other parts of India watches, similar in appearance to a certain class of watches imported and sold by the plaintiff, and having a trade-mark so similar to the trade-mark on the watches imported by

TRADE-MARK—*continued.*

plaintiff that it was calculated to deceive purchasers into the belief that such watches were watches imported and sold by the plaintiff. It was proved [illegible]

watches under a contract for exclusive supply in India. *Held* that the plaintiff was not entitled to [illegible]

that in no case was the plaintiff entitled to relief, [illegible]

consequently in all possible markets in which it might be introduced. Ss 27, 31 and 32 of the Civil Procedure Code (XIV of 1882) did not apply. HEINIGER *v*. DROZ (1900). I. L. R., 25 Bom., 433

2.—**Prior use in Scotland**—*Prior user by owner in Scotland—Effect on right to exclusive user in British India by a person other than the owner—Infringement.*—Plaintiff claimed to have been for many years the sole importer into Bombay and Madras of umbrellas bearing a certain trade-mark. Defendant had recently commenced importing and selling in Madras umbrellas which, plaintiff contended, bore a trade-mark so similar as to be calculated to deceive purchasers so as to induce them to buy defendant's umbrellas under the belief that they

TRADE-MARK—*concluded.*

were buying plaintiff's. He asked for an injunction and damages. Defendant denied that plaintiff had been the sole importer of umbrellas bearing the trade-mark in question; or that he was the owner or entitled to the exclusive use of that trade-mark; or that umbrellas bearing that trade-mark had come to be known as umbrellas imported and sold by plaintiff alone. It was contended that the trade-mark belonged to, and had, since 1884, been used by, a Glasgow firm, who manufactured the umbrellas, and supplied them to defendant, through another. Defendant denied the alleged similarity of the trade-mark, or that purchasers were calculated to be deceived as alleged, and contended that plaintiff could not lawfully use or claim it. For the purposes of the case it was assumed that the trade-mark in question had been used by the Glasgow firm before it was used by

[I. L. R., 24 Mad., 163

3.—Title of a book—*Trade description—Unauthorized publication—Indian Penal Code (Act XLV of 1860), ss. 478, 482—Merchandise Marks Act (IV of 1889), ss. 4, 6*—The complainant, as a descendant of one Shri Chandu, had

publisher in Bombay, prepared a calendar and put the name "Shri Chandu Panchang" on the outside, although the calendar was not prepared by the descendants of Shri Chandu. The complainant thereupon filed an information against the defendant, under s. 482 of the Indian Penal Code (Act XLV of of 1860) and s. 6 of the Merchandise Marks Act (IV of 1889). *Held* (1) that the defendant had committed no offence under s. 482 of the Indian Penal Code (Act XLV of 1860), for the title "Shri Chandu Panchang" did not come within the definition of "trade mark" given in s. 478 of the Code; and (2) that the defendant's act did not fall under s. 6 of the Merchandise Marks Act (IV of 1889), as it was not alleged that the defendant's calendars differed as to text from the complainant's or were compiled on different principles; the allegation was simply that they were unauthorized. RADHA KRISHNA JOSHI *v.* KISSONLAL SHRIDHAR (1901)

[I. L. R., 26 Bom., 289

TRANSFER.

—by landlord—

See LANDLORD AND TENANT—TRANSFER BY LANDLORD.

—by tenant—

See LANDLORD AND TENANT—TRANSFER BY TENANT.

—of decree, for execution—

See CIVIL PROCEDURE CODE, s. 232.
[I. L. R., 29 Calc., 235

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.

—of lease—

See FERRY . I. L. R., 26 Mad., 156

—of malikana rights—

See MALIKANA . 7 C. W. N., 846

—of occupancy right—

See POSSESSION—SUITS FOR POSSESSION.
[7 C. W. N., 607

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

TRANSFER OF CIVIL CASE.

	Col.
1. GENERAL CASES	1112
2. LETTERS PATENT, HIGH COURTS, 1865, CL. 13	1113

1. GENERAL CASES.

1.—Part-heard case—*Civil Procedure Code (Act XIV of 1882), ss. 25, 191 (2)—Suit commenced in a District Court—Issues settled by District Judge—Case transferred to Sub-Court by High Court—Decision by Sub-Judge—Appeal to and decision of District Judge—Validity of decision in appeal and of transfer by High Court.*—A suit was instituted in a District Court, and issues were settled by the District Judge. The suit was then

second appeal being preferred to the High Court

2.—Re-transfer—*Civil Procedure Code, s. 25—Transfer—Re-transfer by District Judge to his own file of a case once transferred by him to the file of the Subordinate Judge.*—Where a District

TRANSFER OF CIVIL CASE—*continued.*

1 GENERAL CASES—*concluded.*

Judge had once exercised the powers conferred by s. 25 of the Code of Civil Procedure, and transferred a case to his own files from the files of the

DAS (1902) . . . I. L. R., 24 All., 304

3. ———— *Civil Procedure Code, ss. 25, 403 et seq—Transfer—Application for leave to sue in formâ pauperis filed in Court of Subordinate Judge—Application transferred by District Judge to his own file—District Judge not thereafter competent to send the suit back to the Subordinate Judge for trial*—A pauper plaintiff presented to a Subordinate Judge an application for leave to sue as a pauper This application was, by means of an order under s 25 of the Code of Civil Procedure,

Judge. *Amir Begam* v. *Prahlad Das (1902), I. L. R, 24 All., 304,* referred to NANDAN PRASAD *v* KENNEY (1902) . I. L. R., 24 All., 356

4. ———— *Act XII of 1887 (Bengal, N.-W. P. and Assam Civil Courts Act), ss 11 and 17—Civil Procedure Code, s. 25—Transfer—Jurisdiction—Construction of Statutes.*—*Held* that the words "in the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held," occurring in s 11, cl. (*1*), of Act XII of 1887, include the abolition by order of Government of a special Court temporarily constituted by Government to exercise jurisdiction in a particular district, and that therefore where such Court, being the Court of a Subordinate Judge, had ceased to exist, and the District Judge had taken upon his own file a suit which had been pending before the said Court, it was competent to the District Judge, under s. 11, cl. (3), of the Act above-mentioned, to re-transfer such suit to the Court of the permanent Subordinate

2. LETTERS PATENT, HIGH COURTS, 1865, CL. 13.

TRANSFER OF CIVIL CASE—*concluded.*

2. LETTERS PATENT, HIGH COURTS, 1865, CL. 13—*concluded.*

Resident and to try and determine the same ABDUL KARIM FATEH MAHOMED *v.* MUNICIPAL OFFICER, ADEN (1903) . . I. L. R., 27 Bom., 575

TRANSFER OF CRIMINAL CASE.

———

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES . . 5 C. W. N., 488

See CRIMINAL PROCEEDINGS. [5 C. W. N., 252

See DISCHARGE OF ACCUSED. [7 C. W. N., 527

See MAGISTRATE—

GENERAL JURISDICTION; [I. L. R., 30 Calc., 449

POWERS OF MAGISTRATES. [I. L. R., 26 Mad., 130

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS. [5 C. W. N., 686

——Letters Patent, High Courts, cl. 29—

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER [I. L. R., 28 Calc., 709

——right of accused to—

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 29 Calc., 392

——when proceedings taken in absence of accused—

See ACCUSED PERSON. [5 C. W. N., 110

1. GENERAL CASES.

1.—Adjournment—*Application for adjournment of trial before hearing—Duty of Court to grant reasonable adjournment—Refusal to adjourn trial; effect of, on subsequent proceedings—Code of Criminal Procedure (Act V of 1898), s 526, cl. (8).*—The law does not require that an application for postponement under sub-s. (8) of s. 526 of the Code

TRANSFER OF CRIMINAL CASE— *continued.*

1. GENERAL CASES—*continued.*

commencement of the hearing, his intention to make an application for the transfer of the case. If such an intention is notified, at however short a time before the commencement of the hearing, the Court before which ... its powers o... reference to ... have had o... time. The ... postponemen... that follow ... *Gayitri P...* *Calc., 455,* ... *(1896), I. L. R., 19 Mad., 375,* distinguished. SURAT LALL CHOWDHRY *v.* EMPEROR (1902) [I. L. R., 29 Calc., 211: s c, 6 C. W. N., 251

2.——————*Criminal Procedure Code (Act V of 1898), ss. 344, 526*...

to enable the petitioner under s. 526 to make his application before the accused is called on for his defence. Where, upon an application made by an accused for adjournment under sub-s. (8) of s. 526, the Magistrate did not make any special order of adjournment for the sole purpose of enabling him ...

of so doing and the time he was called on for defence. S. 526, sub-s. (8), requires only that a reasonable time shall be afforded ...

... up to the point at which the accused would be called on for his defence. DHONE KRISTO SAMANTA *v.* KING-EMPEROR (1902) . . 6 C. W. N., 717

3.—**"Criminal case."**—The provisions of s. 526 of the Criminal ...

criminal case means a case arising out of, and dealing with, some crime already committed. It does not include proceedings taken for the prevention of crime. IN RE PANDURANG GOVIND PUJARI (1900) [I. L. R., 25 Bom., 179

TRANSFER OF CRIMINAL CASE— *continued.*

1. GENERAL CASES—*concluded.*

4.—**Jurisdiction**—*Criminal Procedure Code (Act V of 1898), s. 528—Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a Village Magistrate—Extent of power—Petty thefts triable under Mad. Reg. IV of 1821.*—The jurisdiction which a District or Sub-Divisional Magistrate has, under s. 528 of the Code of Criminal Procedure, to transfer a criminal case from the file of ...

AMMAYAN (1902) . . I. L. R., 26 Mad., 394

5.—**Notice**—*Criminal Procedure Code (Act V of 1898), s. 528—Transfer of case at request of Magistrate.*—An order for the transfer of a case, made at the request of the Magistrate on whose file the case stands, and not on the application of a party, is an exception to the general rule that an order for transfer should not be made under s. 528 of the Code of Criminal Procedure without notice to the other side. QUEEN-EMPRESS *v.* KUPPUMUTHU PILLAI (1900) [I. L. R., 24 Mad., 317

6.——————*Criminal Procedure Code, s. 528—Transfer, application for—Notice to* ...

I. L. R., 8 Calc., 893, referred to. AJODHEYA LAL *v.* PARYAG NARAIN (1902) . 7 C. W. N., 114

7.—**Security for keeping the peace**—*Criminal Procedure Code, ss 107 (2), 192—Power of District Magistrate to transfer proceedings instituted by him against a person not within his district.*—*Held* that it was competent to a District Magistrate, who had initiated proceedings under s. 107 (2) of the Code of Criminal Procedure against a person not at the time within the limits of his jurisdiction, to transfer such proceedings at a later stage to a Magistrate subordinate to himself, although such Magistrate was not competent to initiate such proceedings. KING-EMPEROR *v.* MUNNA (1901) [I. L. R., 24 All., 151

2. LETTERS PATENT, HIGH COURTS, 1865, CL. 29

8.—*Criminal Procedure Code (Act V of 1898), ss. 145, 526—Jurisdiction of High Court to transfer a case pending disposal under s. 145.*—A case under s. 145 of the Code of Criminal

TRANSFER OF CRIMINAL CASE—*continued.*

2. LETTERS PATENT, HIGH COURTS, 1865, CL. 29—*concluded.*

Procedure is a "criminal case," and the High Court has jurisdiction to transfer it, both under s. 526 of the Code of Criminal Procedure and cl. 29 of the Letters Patent. *Re Pandurang Govind Pujari (1900), I. L. R., 25 Bom., 179,* not followed. ARUMUGA TEGUNDAN (1902)

[I. L. R., 26 Mad., 188

3. GROUND FOR TRANSFER.

ordinate Magistrate in the district. BAKTU SINGH *v.* KALI PRASAD (1900)

[I. L. R., 28 Calc., 297

10.——————*High Court, power of, to transfer case under s. 145 of the Code of Criminal Procedure—Bias, reasonable apprehension of—Witnesses, convenience to—Meaning of "case" and "criminal case"—Specific Relief Act (I of 1877), s 9—Code of Criminal Procedure*

s. 526 of that Code. A Court of a Magistrate taking cognizance of a case under s 145 is a Criminal Court, within the meaning of the Criminal Procedure Code. The expression "criminal case," in s. 526, may be

Magistrate has taken cognizance of. Next to the importance of deciding a case fairly and impartially

TRANSFER OF CRIMINAL CASE—*concluded.*

3 GROUND FOR TRANSFER—*concluded.*

is the importance of conducting oneself in such a manner as to inspire in the minds of the parties a

brancer

I. L. R

TAYLOR,

case," ir

co-extensive and are not used indiscriminately or inter-

11.——————*Criminal Procedure Code (Act V of 1898), ss. 526, 164, 342—Transfer of pending cases—Magistrate taking part during*

tary statement made by an accused person, but he is not entitled to examine him in respect of the facts of the case. S 342 of the Code only empowers a Court to examine an accused to explain evidence already recorded. GYA SINGH *v.* MOHAMED SOLIMAN (1901) . . . . . **5 C. W. N., 864**

TRANSFER OF PROPERTY.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES

[I. L. R., 30 Calc., 961

—*Impartible zamindari—Unregistered transfer—Transfer of Property Act—Effect of recited*

TRANSFER OF CRIMINAL CASE— *continued.*

I. GENERAL CASES—*continued.*

Court before which the case is pending, before the commencement of the hearing, his intention to make an application for the transfer of the case. If such an intention is notified, at however short a time before the commencement of the hearing, the Court before which the case is pending is bound to exercise its powers of postponement or adjournment without reference to any opportunity that the party might have had of making an application at some earlier time. The refusal to grant such an application for postponement is illegal, and none of the proceedings that follow can be supported *Queen-Empress* v. *Gayitri Prosunno Ghosal (1888), I. L. R., 15 Calc., 455,* followed *Queen-Empress* v *Virasami (1896), I. L. R., 19 Mad., 375,* distinguished. SURAT LALL CHOWDHRY v EMPEROR (1902)

[I. L. R., 29 Calc., 211; s c., 6 C. W. N., 251

2.——————*Criminal Procedure Code*

adjournment for the sole purpose of enabling him

ponement being made and an order being obtained thereon before the accused is called on for his defence. It is therefore competent to the Magistrate, before granting an adjournment, to proceed with the case up to the point at which the accused would be called on for his defence DHONE KRISTO SAMANTA v KING-EMPEROR (1902) . . 6 C. W. N., 717

TRANSFER OF CRIMINAL CASE— *continued.*

I. GENERAL CASES—*concluded.*

include proceedings taken for the prevention of crime. IN RE PANDURANG GOVIND PUJARI (1900)

[I. L. R., 25 Bom., 179

4.—Jurisdiction—*Criminal Procedure Code (Act V of 1898), s. 528—Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a Village Magistrate—Extent of power—Petty thefts triable under Mad. Reg. IV of 1821.*—The jurisdiction which a District or Sub-Divisional Magistrate has, under s. 528 of the Code of Criminal Procedure, to transfer a criminal case

5.—Notice—*Criminal Procedure Code (Act V of 1898), s. 528—Transfer of case at request of Magistrate.*—An order for the transfer of a case,

[I. L. R., 24 Mad., 317

6.——————*Criminal Procedure Code, s 528—Transfer, application for—Notice to*

party, notice should be given to the other party, before an order of transfer is made. *Teacottah Shekdar* v. *Ameer Majee and others (1882), I. L R., 8 Calc., 393,* referred to. AJODHEYA LAL v. PARYAG NARAIN (1902) . 7 C. W. N., 114

7.—Security for keeping the peace—*Criminal Procedure Code, ss 107 (2), 192—Power of District Magistrate to transfer proceedings instituted by him against a person not within his district.*—*Held* that it was competent to a District Magistrate, who had initiated proceedings under s 107 (2) of the Code of Criminal Procedure against a person not at the time within the limits of his jurisdiction, to transfer such proceedings at a later stage to a Magistrate subordinate to himself, although such Magistrate was not competent to initiate such proceedings. KING-EMPEROR v. MUNNA (1901)

[I. L. R., 24 All., 151

2. LETTERS PATENT, HIGH COURTS, 1865, CL. 29.

8.—*Criminal Procedure Code (Act V of 1898), ss 145, 526—Jurisdiction of High Court to transfer a case pending disposal under s. 145.*—A case under s 145 of the Code of Criminal

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 53—*continued.*

or delay creditors—13 Eliz, Cap. 5, and 27 Eliz, Cap. 4—Bhagwant filed a suit against Ganpati, the manager of a Hindu undivided family, to recover a sum of money due to him, and on the same day obtained an order for attachment before judgment of certain property belonging to the defendant and his family Before the attachment was actually effected, the property in question and other property was sold to Kedari (defendant No 1). The deed of conveyance was executed on the day the suit was filed, and the order for attachment was made and notice of the order for attachment was ... rchaser before ... he attachment ... the plaintiff ... nd then filed this suit against the vendor and purchaser, praying for a declaration that the conveyance was fraudulent and void, and that the property was liable to attachment in execution of his decree. The lower Courts dismissed the suit, holding that the sale to ... object ... of the ... : *Held* ... of the Transfer of Property Act (IV of 1882) did not apply, *as it was not found that the transfer in question* was made fraudulently or for a grossly inadequate consideration *Held, also,* that, although the object of the transfer was to defeat an anticipated execution, that did not show that the intent was to defeat or delay the creditors so as to render cl. 1 of s. 53 applicable. Such intent would probably be inferred if there was such an inadequacy of ...

2. ——————*Suits by one creditor to set* ...

ISHVAR TIMAPPA HEGDE *v.* DEVAR VENKAPPA SHANBOG (1902) . . I. L. R., 27 Bom., 146

3. —————— *Transfer to one creditor—Good faith.*—One Byramji Kuverji died in June, 1896, indebted to several creditors. Immediately after his death his sons mortgaged his property to Moti Gelaji, one of his creditors. On the 11th August, 1897, another creditor, Jaitha Kupaji, obtained letters of administration to the estate of the deceased, and, as such administrator, sold the property to the son of the mortgagee, the latter having died. Subsequently the plaintiffs

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 53—*concluded.*

...

appeared that in this case it was intended that the grantee should have the property and keep it. NATHA KUPAJI *v.* MAGANCHAND MOTIJI (1903) [I. L. R., 27 Bom., 322

——s. 54—

See MORTGAGE—REDEMPTION—RIGHT TO REDEEM . I. L. R., 24 Mad., 449

——s. 55 (4)—

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF. [L. R., 30 I. A., 238

——s. 57—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS [I. L. R., 24 Mad., 412

——s. 58—

See MORTGAGE—

FORM OF MORTGAGES ;
[I. L. R., 27 Bom., 600
" 26 Bom., 33
" 25 Mad., 220

CONSTRUCTION.
[I. L. R., 26 Mad., 662
" 26 Bom., 252
L. R., 29 I. A., 148

——s. 59—

See DEED—

EXECUTION ;

[5 C. W. N., 454

ATTESTATION
[I. L. R., 27 Bom., 91
7 C. W. N., 160, 384

See REGISTRATION ACT (III OF 1877). s. 28 . . I. L. R., 29 Calc., 654

See SIGNATURE.
[I. L. R., 24 All., 319

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 60—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . 5 C. W. N., 83
[I. L. R., 24 Mad., 409, 449

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R., 24 All., 44

——s. 65—

—*Cl. (a)—Duty of mortgagor to pay public revenue on mortgaged land—Default in payment—Sale for arrears of revenue—Subsequent sale by purchaser at revenue sale to original mortgagor—Right of mortgagee under original mortgage.*—It is the duty of a mortgagor, under s. 65 (c) of the Transfer of Property Act, to pay the public revenue accruing due on the mortgaged property, when it continues in his possession. If he fails to perform that duty, and the land is sold for arrears of revenue, and the purchaser at the revenue sale sells the land to the original mortgagor, the mortgage is not extinguished A man cannot be allowed to take advantage of his own wrong; and, notwithstanding that the land might have vested in the purchaser at the revenue sale free of the mortgage, the original mortgagor (or his son), on his purchase from the auction-purchaser, cannot plead, for his [illegible]

[illegible]

ollowed. SANAGAPALLY LAKSHMAYYA *v.* INTOORY BOLLA REDDY (1902)
[I. L. R., 28 Mad., 385

——s. 67—

See post, s. 99
[I. L. R., 30 Calc., 463

See MORTGAGE—

POWER OF SALE;
[I. L. R., 26 Bom., 241

REDEMPTION—RIGHT OF REDEMPTION.
[I. L. R., 23 All., 1

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880), ss. 2, ETC.
[I. L. R., 29 Calc., 537

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
[I. L. R., 24 All., 549

See SURETY—ENFORCEMENT OF SECURITY . I. L. R., 30 Calc., 1060

——s. 68—

See MORTGAGE—POWER OF SALE.
[I. L. R., 26 Bom., 241

——s. 70—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 29 Calc., 803

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 72—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.
[I. L. R., 30 Calc., 794

——s. 73—

See LIMITATION ACT, 1877, SCH. II, ART 132 . . 5 C. W. N., 356

——s. 74—

See MORTGAGE—

SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES;
[I. L. R., 24 All., 185

FORECLOSURE—RIGHT TO FORECLOSURE.
[I. L. R., 24 All., 179

—*Mortgage of property—Subsequent mortgage to same mortgagee—Third mortgage, with possession—Decree obtained by first mortgagee—Usufructuary mortgagee not a party—Subsequent suit* [illegible] *mortgagee* [illegible] nd mort- [illegible] late, gave plaintiffs a second mortgage over it. At a still later date, the mortgagor gave a further usufructu- [illegible]

[illegible]

24 *Mad.*, 71, *at pp.* 174, 175, followed. GOVERDHANA DOSS *v.* VEERASAMI CHETTI (1902)
[I. L. R., 26 Mad., 537

——s. 75—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.
[I. L. R., 23 All., 1

——s. 80—

See MORTGAGE—REDEMPTION—MISCELLANEOUS . I. L. R., 23 All., 429

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 81—

See REGISTRATION.
[I. L. R., 26 Bom., 538

——s. 82—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 29 Calc., 803

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY
[I. L. R., 23 All., 355

1.—Contribution—*Liability of several properties to rateable contribution "in the absence of*

Act, and claimed rateable contribution from the other portions of the mortgaged property which had not been sold to satisfy the mortgagee's decree *Held* that he was entitled to recover, and that his right to rateable contribution was in no way affected by the indemnity bond or the payment made to him thereunder. *Held, further,* that the words "in the absence of a contract to the contrary," in s. 82 of the Transfer of Property Act, apply to contracts between a mortgagor and mortgagee, and that an agreement which is binding only as between the mortgagors is not "a contract to the contrary," within the meaning of the section RAMABHADRACHAR *v.* SRINIVASA AYYANGAR (1900)
[I. L. R., 24 Mad., 85

2.——————*Contribution to mortgage debt—Liability of land in possession of third person*—Certain land was mortgaged to *R* Subsequently a portion of the land comprised in *R's*

R's security. This remaining land was purchased by some of the defendants Plaintiffs now sued on

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 82—*continued.*

their mortgage, and claimed not only as against their mortgagors, and the property comprised in

in their character of second mortgagees stood in a fiduciary position towards their mortgagors, and that th

dent

was

adva

took

taker

was objected that the suit was not maintainable by reason of s. 43 of the Code of Civil Procedure *Held* that this objection was not sustainable, and that, regarding the case as one of a mere personal claim on the instrument of mortgage, s 43 did not apply. SESHA AYYAR *v.* KRISHNA AYYANGAR (1900) . . . . I. L. R., 24 Mad., 96

3——————*Contribution, suit for—Mortgage debt—Mortgage-decree directing sale of some of the mortgaged properties first—Purchase of properties by different parties—Payment of*

the incidence of the debt may be
done in this case, primarily on some of the

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 82—*concluded.*

and the other properties are only liable if the debt is not realized by the sale of those properties. Whatever might have been the right of the purchaser of some of the properties if such a mortgage-decree had not been passed, he cannot, when he has pur-

GOPI KISHORE MANDUL (1902)
[6 C. W. N., 583

——s. 83—

See MORTGAGE—REDEMPTION—

RIGHT OF REDEMPTION;
[I. L. R., 26 Bom., 312

MISCELLANEOUS CASES.
[I. L. R., 27 Bom., 23

1.—*Ss* 83, 84—*Mortgage—Re-payment of money lent—Lender not bound to accept payment by instalments, unless he has so agreed.*—Where no stipulation or covenant has been made between the contracting parties as to the repayment of a sum borrowed, the lender is entitled to decline to receive payment of a sum due to him in instalments, and he can claim that the whole sum due be paid at one and the same time. BEHARI LAL *v.* RAM GHULAM (1902) . I. L. R., 24 All., 461

2.—*Redemption of mortgage—Deposit in Court by the mortgagor of the sum alleged by him to be due on the mortgage—Conditions of such deposit.*—A mortgagor paid into Court, under the provisions of s. 83 of the Transfer of Property Act, the sum which in his estimation was sufficient to redeem his mortgage. The mort-

to the High Court, but, pending their appeal, were allowed by the Court in which it was deposited to withdraw the money paid in by the plaintiff under s 83. *Held* that the defendants had, after such withdrawal of the money deposited by the plaintiff, no right to proceed with their appeal. The money deposited by the mortgagor plaintiff

discharge of their mortgage, and deposited the mortgage deed (if in their possession or power) in Court. DAL SINGH *v.* PITAM SINGH (1902)
[I. L. R., 25 All., 179

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 84—

See MORTGAGE—REDEMPTION—

RIGHT OF REDEMPTION;
[I. L. R., 26 Bom., 312

MISCELLANEOUS CASES
[I. L. R., 27 Bom., 23

——s. 85—

See HINDU LAW—ALIENATION—ALIENATION BY FATHER
[I. L. R., 28 Calc., 517
„ 24 All., 211

See MORTGAGE—

SALE OF MORTGAGED PROPERTY—

RIGHTS OF MORTGAGEES;
[I. L. R., 30 Calc., 599

PURCHASERS;
[I. L. R., 23 All., 467

REDEMPTION—RIGHT OF REDEMPTION.
[5 C. W. N., 83
I. L. R., 23 All., 25

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

See SALE IN EXECUTION OF DECREE—

JOINT PROPERTY;
[I. L. R., 25 All., 214

MORTGAGED PROPERTY.
[I. L. R., 24 All., 549

——s. 86—

See LIMITATION ACT, 1877, SCH. II, ARTS. 178 AND 179.
[I. L. R., 24 All., 542

——s. 87—

See LIMITATION ACT, 1877, SCH. II, ARTS. 178 AND 179.
[I. L. R., 24 All., 542

See MORTGAGE—

REDEMPTION—RIGHT OF REDEMPTION . I. L. R., 25 All., 231

FORECLOSURE—

RIGHT OF FORECLOSURE;
[6 C. W. N., 654

DEMAND AND NOTICE OF FORECLOSURE.
[I. L. R., 29 Calc., 644

——s. 88—

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE . . 5 C. W. N., 137

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT . I. L. R., 25 All., 541

See INTEREST—MISCELLANEOUS CASES—MORTGAGE . . 6 C. W. N., 769

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*.

——s. 88—*concluded*.

See LIMITATION ACT, 1877, SCH. II, ART 179—STEP IN AID OF EXECUTION —SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER. [I. L. R., 24 Mad., 695

See LIS PENDENS. [I. L. R., 23 All., 331

——ss. 88, 89—

—*Application for order for decree absolute—Appeal—Civil Procedure Code (Act XIV of 1882)*,

Ajudhia Pershad v. *Baldeo Singh, I. L. R., 21 Calc., 818*, and *Tara Prosad Roy* v. *Bhobodeb Roy, I L. R., 22 Calc, 931*, discussed MALLIKARJUNADU SETTI v. LINGAMURTI PANTULU (F B, 1902) . . I. L. R., 25 Mad., 244

——ss. 88, 89, 90—

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

——s. 89—

See post, s. 90 AND s 89.

See CIVIL PRODEDURE CODE, s. 108. [I. L. R., 25 All., 42

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT. [I. L. R., 25 Mad., 537

See INTEREST—MISCELLANEOUS CASES—MORTGAGE . . 6 C. W. N., 769

See LIMITATION ACT, 1877, SCH. II, ART. 179—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER. [I. L. R., 24 Mad., 695

See LIS PENDENS. [I. L. R., 23 All., 331

See SALE IN EXECUTION OF DECREE—

MORTGAGED PROPERTY; [I. L. R., 25 Mad., 506

SETTING ASIDE SALE—GENERAL CASES . I. L. R., 25 Bom., 104

—*Mortgage—Order absolute for sale of mortgaged property, application for—Decree—Execu-*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*

——s. 89—*concluded*.

as an appeal from an original decree *Tiluck Singh* v. *Parsotein Proshad (1895), I. L. R, 22 Calc., 925*, and *Tara Prosad Roy* v *Bhobodeb Roy (1895), I. L. R, 22 Calc, 931*, relied upon The decision of the majority of the Full Bench in

into the plea of payment of the mortgage-debt. PRAMATHA CHANDRA ROY v KHETRA MOHAN GHOSE (1902) . . I. L. R., 29 Calc., 651

——s. 90—

See ante, ss 88, 89, 90

See COSTS—SPECIAL CASES—MORTGAGE. [I. L. R., 23 All., 439

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT . . I. L. R., 25 All., 541

—*Mortgage-decree—Order under s. 90 not neces-*

original decree is a personal one against the mort-

[illegible] C. W. N., 744

——s. 90 and s. 89—

—*Execution of decree—Mortgage—Decree for sale of part only of the mortgaged property—Property sold insufficient to satisfy the mortgage-*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 90 and s. 89—*concluded.*

proved insufficient to satisfy the mortgage-debt, the decree-holder applied for a decree over, under s. 90 of the Transfer of Property Act, against the unhypothecated property of the mortgagor. *Held* that, the

——s. 91—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R., 25 All., 446
5 C. W. N., 83

————cl. (f)—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.
[I. L. R., 23 All., 467

——s. 92—

See RES JUDICATA—

ESTOPPEL BY JUDGMENT;
[I. L. R., 24 All., 44

ADJUDICATIONS.
[I. L. R., 25 Mad., 300

——ss. 92, 93—

See MORTGAGE—REDEMPTION—

RIGHT OF REDEMPTION;

REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—REDEMPTION AFTER EXPIRY OF TIME
[I. L. R., 26 Bom., 121

——s. 93—

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 24 All., 44

——*ss. 92, 93—Mortgage—Redemption—Application for enlargement of time—Application to be made to the Court of first instance, not to the Appellate Court.*—Where a decree for redemption under s. 92 of the Transfer of Property Act, 1882, has been made by an Appellate Court, an application under the last paragraph of s. 93 must be made, not to that Court, but to the Court of first instance. *Venkata Krishna Ayyar* v. *Thiagaraya Chetti (1899), I. L. R., 23 Mad., 521,* followed. *Oudh Behari Lal* v. *Nageshar Lal (1890), I. L. R., 13 All., 278,* referred to. SHEONARAIN v. CHUNNI LAL (1900) . . . . I. L. R., 23 All., 88

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 96—

See MORTGAGE—POWER OF SALE.
[I. L. R., 25 Mad., 108

——ss. 96, 97—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 30 Calc., 953

——s. 98—

See MORTGAGE—

FORM OF MORTGAGES;
[I. L. R., 27 Bom., 600

CONSTRUCTION.
[I. L. R., 26 Bom., 252

——s. 99—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 26 Bom., 88

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880), ss. 2, ETC.
[I. L. R., 29 Calc., 537

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.
[I. L. R., 25 Bom., 161

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
[I. L. R., 24 All., 549

See SURETY—ENFORCEMENT OF SECURITY.
[I. L. R., 30 Calc., 1060

——*Mortgage—Sale of mortgaged property—Money-decree—Transfer of Property Act (IV of 1882), ss 67, 99—Execution—Purchase by the mortgagee, effect of—Mortgagee, liabilities of—Account.*—A mortgagee, in execution of a decree obtained against the mortgagor on account of another debt, sold the mortgaged properties, purchased the equity of redemption himself, and obtained possession through the Court. And, in a subsequent suit upon the mortgage for sale of the mortgaged properties, the defence, *inter aliâ,* was that the proceedings were contrary to the provisions of s. 99 of the Transfer of Property Act; that the purchase by the plaintiff was null and void; and that the mortgagee was bound to account for the period he was in [illegible] that, [illegible] Transf[illegible] mortg[illegible] obtained by him was not in accordance with law, and he was therefore liable to render account of moneys realized from the mortgaged properties during the term of his possession. *Durgayya* v. *Anantha (1890), I. L. R., 14 Mad., 74,* followed. *Sri Raja Papamma Rao* v. *Sri Vira Pratapa Ramachandra Razu (1896), I. L. R., 19 Mad., 249,* referred to. SHIB DASS DASS v. KALI KUMAR ROY (1903)

[I. L. R., 30 Calc. 463;
s.c., 7 C. W. N., 532

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 100—

—*Mortgage—Suit by sons against father for partition—Subsequent mortgage of suit property by father—Consent-decree in partition suit—Subsequent decree in a suit on the mortgage against the father alone—Liability of property in execution—Effect of instrument intended to be a mortgage but defective in form—Charge.*—Plaintiffs, who were the sons of first defendant, had, on 18th March, 1893, instituted a suit against their father for partition. On 24th July, 1893, their father executed a deed purporting to mortgage the house to defendants Nos. 2 and 3 That deed was, however, attested by only one witness On 24th December, 1894, a *razinama* was filed, and a decree based on it was passed in the partition suit between plaintiffs and their father, by which the father conveyed to plaintiffs the whole of his interest in the immovable family property, retaining only sufficient money to satisfy certain incumbrances [illegible]

——s. 101—

See MORTGAGE—

SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES; [I. L. R., 26 Bom., 88

REDEMPTION—RIGHT OF REDEMPTION . I. L. R., 23 All., 1

See SALE FOR ARREARS OF RENT—INCUMBRANCES . . 6 C. W. N., 834

——s. 103—

See MORTGAGE—REDEMPTION—MISCELLANEOUS CASES . I. L. R., 27 Bom., 23

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 105—

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . . L. R., 29 I. A., 138

——s. 107—

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . L. R., 29 I. A., 138

See REGISTRATION ACT, S. 17, CL. (*d*) [I. L. R., 24 Mad., 421

——s. 108, cl. (*c*)—

See LANDLORD AND TENANT—OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION. [I. L. R., 25 Bom., 269

——cl. (*g*)—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES. [6 C. W. N., 336

——cls. (*h*), (*o*)—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND. [I. L. R., 24 Mad., 47

——s. 111—

See LANDLORD AND TENANT—NATURE OF TENANCY. [I. L. R., 26 Mad., 488

——cl. (*d*)—

See PATNI TENURE. [I. L. R., 25 Calc., 744

——cl. (*g*)—

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS. [I. L. R., 26 Mad., 157

——s. 116—

See LANDLORD AND TENANT—HOLDING OVER AFTER TENANCY. [I. L. R., 27 Bom., 282

——ss. 116, 117—

See LANDLORD AND TENANT—HOLDING OVER AFTER TENANCY. [I. L. R., 28 Calc., 227

——s. 117—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND. [I. L. R., 24 Mad., 47

——s. 118—

1.—*Exchange or partition—Transfer, without writing or registration*—Where plaintiff and defendants Nos. 4 to 6 were joint owners of certain property, and plaintiff alone was owner of other property, and by an oral arrangement plaintiff got the former property in its entirety: *Held* that

TRANSFER OF PROPERTY ACT (IV OF 1882)—*concluded.*

——s. 118—*concluded.*

[illegible] 118 of the [illegible] and [illegible] ered. [illegible] R., [illegible] v. [illegible] 724

2.—*Landlord and Tenant—Transfer of Property Act (IV of 1882), ss. 118, 119—Exchange.*—Where a tenant voluntarily surrendered certain leasehold rights, and took from the landlord leasehold rights of some other property: *Held* that the transaction was not an exchange. WALIUL HASSAN *v.* GOPAL SARUN NARAIN SINGH. (1902) . . . . . 6 C. W. N., 905

——s. 119—

See ante, s. 118 . 6 C. W. N., 905

——s. 123—

See HINDU LAW—GIFT—REQUISITES FOR GIFT . . I. L. R., 25 All., 358

See MAHOMEDAN LAW—GIFT. [I. L. R., 24 Mad., 513

——s. 135—

See N.-W PROVINCES RENT ACT (XII OF 1881), *ss* 42, 95 AND 206. [I. L. R., 24 All., 517

TREES.

See INJUNCTION—SPECIAL CASES—CUTTING TREES.

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.

See PARTITION—MISCELLANEOUS CASES [I. L. R., 23 All., 291

See POSSESSION—EVIDENCE OF POSSESSION . . I. L. R., 24 All., 294

——removal of, suit for—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—N.-W. PROVINCES . . I. L. R., 23 All., 486

TRESPASS.

See CRIMINAL TRESPASS.

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY. [I. L. R., 25 Bom., 248

——by cattle—

See CATTLE TRESPASS ACT.

TRESPASSER.

See MESNE PROFITS—

RIGHT TO, AND LIABILITY FOR; [I. L. R., 24 All., 376

TRESPASSER—*concluded.*

See MESNE PROFITS—*concluded.*

MODE OF ASSESSMENT AND CALCULATION . I. L. R., 23 All., 252

TRIBUTARY MAHALS OF ORISSA.

—*Jurisdiction—Mohurbhunj—Execution—Decree of Court in British India—Transmission of decree for execution by Court at Mohurbhunj—Civil Procedure Code (Act XIV of 1882), ss. 229A, 229B.*—There being no notification to that effect in the Gazette under ss. 229A and 229B, Civil Procedure Code, a Civil Court in British India has no jurisdiction to order its decree to be sent for execution by the [illegible] *jur v. Parshe* [illegible], referred to. [illegible] which Mohur- [illegible] British India. KHATOO SAHOO *v.* RATAN MAHANTI (1902) [6 C. W. N., 573; s.c., I. L. R., 29 Calc., 400

TRUST.

See LIMITATION ACT, 1877, s. 10.

See MAHOMEDAN LAW—ENDOWMENT.

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TRUSTS.

See WILL—CONSTRUCTION—CHARITABLE GIFT . . . 6 C. W. N., 321

——breach of—

See EXECUTOR. [I. L. R., 26 Bom., 301

——for benefit of creditors—

See INSOLVENT ACT (11 AND 12 VICT., c. 21)—

s. 9; . [I. L. R., 26 Bom., 476

ss. 9 AND 24. [I. L. R., 26 Bom., 765

1.—Nature of suit—*Suit for land—Property—Executors—Trust—Limitation Act (XV of 1877) s. 10.*—Where property was by will vested in [illegible]

Coomaree Dossee v. Tarini Churn Bysack (1852).

TRUST—*continued.*

I. L. R., 8 Calc., 766, referred to. NISTARINI DASSI *v.* NUNDO LAL BOSE (1902)
[I. L. R., 30 Calc., 369

2.—**Secret trust**—*Evidence*—A party setting up a secret trust must adduce evidence to prove that it was communicated by the testator to the universal legatee, and that the legatee agreed to accept the property bequeathed on the terms of the trust. *Jones* v. *Badley (1868), L. R., 3 Ch. A. C., 362,* referred to. KALI CHARAN GHOSAL *v.* RAM CHANDRA MANDAL (1903) . I. L. R., 30 Calc., 783

3.—**Trust not completed**—*Trust deed—Trust not completed—No possession of trust property taken by trustees—Deed never acted upon—Gift*

trustees a large amount of property in trust (ultimately) for the sons of Soonderdas Mulji in equal shares when the youngest of such sons should attain twenty-one years of age or the survivor of the wives of Soonderdas Mulji should die, whichever should last happen. At the date of his deed, Soonderdas Mulji had only one son, who was then eight years old, but on the 6th *Magsir Sud* 1931 (14th December, 1874) a second son (the plaintiff) was born, and he attained his majority on 6th *Magsir Sud*

30th October, 1888, whereby, after giving certain

the will of his father Soonderdas, and he bequeathed the whole of such properties to his son, the defendant Karsandas. The plaintiff thereupon filed this suit, contending that the trust-deed was inoperative, and that he was entitled to a moiety of the estate, and that Dharamsi's will was of no effect. *Held* that the trust-deed was inoperative and of no effect—(*a*) inasmuch as, under its provisions, the

GORDHANDAS SOONDERDAS *v.* BAI RAMCOOVER (1901) . . . I. L. R., 26 Bom., 449

TRUST PROPERTY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—TRUST PROPERTY.

TRUSTEE.

See TRUST.

——alienation by—

See LIMITATION ACT, 1877, SCH. II—ART. 134;
[I. L. R., 26 Bom., 363, 500
ARTS. 134 AND 144.
[I. L. R., 27 Bom., 373

——assignment of trusteeship—

See ACT—1863—XX, s. 18.
[I. L. R., 2 Mad., 219

——nature of liability of—

See RECEIVER . I. L. R., 30 Calc., 937

——of temple—

See ACT—1863—XX.

——suit against—

See LIMITATION ACT, 1877, s. 10.
[7 C. W. N., 353

TRUSTS ACT (II OF 1882).

See EXECUTOR.
[I. L. R., 28 Bom., 301

TRUSTS ACT (II OF 1882)—*concluded.*

—— s. 91—

See VENDOR AND PURCHASER—INVALID SALES . . I. L. R., 26 Bom., 159

U

UNCHASTITY.

See DEFAMATION—IMPUTATION ON A WIFE . I. L. R., 25 Bom., 151

See HINDU LAW—

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—UNCHASTITY;

MAINTENANCE—WIDOW; [I. L. R., 27 Bom., 485

PARTITION—RIGHT TO PARTITION—WIDOW; I. L. R., 24 Mad., 441

STRIDHAN—EFFECT OF UNCHASTITY.

See SLANDER I. L. R., 28 Calc., 452

UNCONSCIONABLE BARGAIN.

See INTEREST—MISCELLANEOUS CASES—BOND . . I. L. R., 25 All., 284

See WILL—CONSTRUCTION [5 C W. N., 729

UNDER-RAIYAT.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT. [I. L. R., 29 Calc., 231

UNDUE INFLUENCE.

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT (INEQUITABLE CONTRACTS). [I. L. R., 25 Bom., 126

See ONUS OF PROOF—PRINCIPAL AND AGENT . . I. L. R., 25 All., 358

See PARDANASHIN WOMEN. [5 C. W. N., 505

UNLAWFUL ASSEMBLY.

See ABSCONDING OFFENDER. [I. L. R., 29 Calc., 417

See PENAL CODE, s 186. [I. L. R., 30 Calc., 285

See PRIVATE DEFENCE, RIGHT OF [I. L. R., 26 Mad., 249

See RIOTING.

1.—Penal Code, s. 141—*Penal Code (Act XLV of 1860), ss 379, 141, 147—Theft—Rioting* [illegible]

UNLAWFUL ASSEMBLY—*continued.*

[illegible] rt, while dis- [illegible] an unlawful [illegible] nmon object [illegible] called upon to plead nor tried, and to affirm the conviction. RAHIMUDDI v. ASGARALI (1900) 5 C. W. N., 31

2. [illegible] Hiring and harbouring [illegible] son to join or become a member of a particular [illegible] offence. S. 157 of the Penal Code is of wider application. It provides for an occurrence that may happen, and makes the harbouring, receiving or assembling of persons who are likely to be engaged [illegible] s c., 6 C. W. N., 143

3 ———— *Indian Penal Code (Act XLV of 1860), ss. 141, 146—Rioting - Common object—Lawful assembly becoming unlawful*—A lawful assembly may turn unlawful all on a sudden, and without previous concert among its members Among the members of a religious procession, those who may be actually found resorting to force and violence with the common object of overawing a police officer in the lawful discharge of his duties would constitute themselves an unlawful assembly. RAGHO SINGH v. KING-EMPEROR (1902) [6 C. W. N., 507

4.—Penal Code, s. 143—*Possession of land, question of—Onus of proof—Prosecution, duty of, to prove facts—Presumption*—Where some persons were accused and charged with having come upon a piece of land with a large number of people and committed mischief in respect of some indigo crops

UNLAWFUL ASSEMBLY—*continued.*

said to have been raised upon it by the complainant's tenants, and the accused pleaded that they held the land from some time before, and in proof put in a road-cess return, filed by the complainant, showing that the accused were, at the date when the return was filed, in possession of a larger plot of land of which they claimed the land in dispute to be a part: *Held* that the presumption as to the possession of the disputed land was in favour of the accused, and that it was for the prosecution to prove that the accused gave up possession of the land of which they had *held previous possession, or that they had held* some other lands in the same village which were mentioned in the road-cess return, before any conviction could be had of the accused. BIKU KOER v. MARSHMAN (1901) . . 5 C. W. N., 368

5.——— *Defence by accused persons* [illegible]

of the paddy, with his servants, whereupon all the accused resisted him, and maintained the possession of the first accused, some blows being struck. On a charge being preferred against the accused for rioting: *Held* that no offence had been committed. KING-EMPEROR v. AYYA ANNASAMY AIYAR (1901) [I. L. R., 25 Mad., 624

6.—Penal Code, s. 144—*Penal Code, ss 114, 144—Possession of deadly weapon, if necessary to render each member of unlawful assembly liable for offence under s 144*—When one person instigates another to join an unlawful assembly armed with a deadly weapon, and afterwards joins the unlawful assembly himself, he may be punishable under s 144, Indian Penal Code, read with s 114, even though he was not himself armed with a deadly weapon. SRIHARI SHOME v. LAL KHAN (1900) [5 C. W. N., 250

7.——— *Evidence of common object*—Two persons were charged with being members of an unlawful assembly armed with deadly weapons for the purpose of committing dacoity [illegible]

accused under s. 144 of the Indian Penal Code [illegible]

UNLAWFUL ASSEMBLY—*concluded.*

8.—Penal Code, s. 148—*Indian Penal Code (Act XLV of 1860), ss. 148, 149, 324—Rioting, armed with deadly weapon—Offence committed in prosecution of common object*—The principal accused, who was unarmed, appeared with a large [illegible]

by one of them, with a dao picked up in the hut. The person who inflicted the wound was not placed on his trial Of the others who were placed on their trial, the petitioners were convicted by the Joint Magistrate under s 148 and s 324, read with s. 149, of the Indian Penal Code *Held* that the conviction under s 148, Indian Penal Code, was wrong, as each person charged under that section must himself be shown to have been armed. *Sabir v. Queen-Empress (1894), I. L. R, 22 Calc, 276,* followed. *Held, further,* that the wound inflicted on Wahed Ali could not be regarded as the natural result of the common enterprise in which the accused were engaged, so that the conviction under s. 324, read with s 149, was also wrong HARENDRA CHANDRA SARKAR v EMPEROR (1903) . 7 C. W. N., 512

UNPROFESSIONAL CONDUCT.

See CONTEMPT OF COURT—PENAL CODE, s. 174 7 . . 7 C. W. N., 797

See MOOKTEAR

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL.

UNSOUNDNESS OF MIND.

See INSANITY.

See LUNATIC

USAGE.

See CUSTOM

See LOCAL USAGE

USER.

See EASEMENT [I. L. R., 30 Calc., 1077

See PRESCRIPTION

See RIGHT OF WAY.

USUFRUCTUARY MORTGAGE.

See MORTGAGE—

CONSTRUCTION—

BOND AND RENTAL AGREEMENT. [I. L. R., 26 Mad., 662

USUFRUCTUARY MORTGAGE;

POSSESSION UNDER MORTGAGE;

REDEMPTION—RIGHT OF REDEMPTION . 6 C. W. N., 601

USURY.

See Hindu Law—Usury.

See Interest—Stipulations amounting or not to Penalties.

V

VAKALATNAMA.

See Limitation Act, 1877, Sch. II, Art. 179—Nature of Application—Generally. [I. L. R., 26 Mad., 197

See Pleader—Appointment and Appearance.

VAKIL.

See Contempt of Court—Penal Code, s 174 . . . 7 C. W. N., 797

See Pleader.

——appearance of, on Original Side of Calcutta High Court—

See Practice—Civil Cases—Vakil and Counsel . I. L. R., 30 Calc., 986

See Superintendence of High Court—Civil Procedure Code, s. 622. [7 C. W. N., 843

——compromise by, of suit—

See Counsel . 6 C. W. N., 82

——in Kumaun or Garhwal, enrolment of—

See Legal Practitioners Act, ss. 6 and 8 . I. L. R., 24 All., 348

VALUATION OF APPEAL.

See Appeal to Privy Council—Cases in which Appeal lies or not—Valuation of Appeal.

See Valuation of Suit—Appeals.

VALUATION OF SUIT.

See Appeal to Privy Council—Cases in which Appeal lies or not—Valuation of Appeal.

See Appellate Court—

General Duty of Appellate Court; [I. L. R., 25 All., 174

Interference with, and Power to vary, Order of Lower Court. [I. L. R., 30 Calc., 501, 516

VALUATION OF SUIT—*continued.*

See Court-fees Act—

s. 7, cl. IV (*d*); [I. L. R., 24 Mad., 34

Sch. I, Art. 11. [I. L. R., 24 Mad., 241

See Plaint—Rejection of Plaint. [I. L. R., 23 All., 423

1. SUITS.

1.—"Land"—*Pre-emption—Wajib-ul-arz—Court-fee—Act VII of 1870 (Court-fees Act), s 7, sub-s. V (b)—Land—Valuation of suit.*—The term "land", as used in the Court-fees Act, 1870, does not include buildings. A claim, therefore, for pre-emption of an indigo factory, although the site of the factory may be land paying revenue to the Government, must be valued, and court-fees paid thereon according to the value of the buildings constituting the factory, and not according to the value of the site Such buildings as constitute an indigo factory would fall within the meaning of the term "houses", as used in the Court-fees Act. Durga Singh *v.* Bisheshar Dayal (1898) [I. L. R., 24 All., 218

2.—Membership of tarwad—*Valuation of a suit for declaration as to membership of tarwad.*—The value of a suit for a declaration that certain persons are or are not members of a *tarwad* is the value of the share of the *tarwad* property which would be allotted to them if a partition were made by common consent. Panga *v.* Unnikutti (1900) . . I. L. R., 24 Mad., 275

3.—Partition—*Act XII of 1887 (Bengal Civil Courts Act), s. 21—Act I of 1887 (General Clauses Act), s. 3, cl. (13)—Valuation of suit—Appeal—Suit for partition.*—In a suit for partition of the share of one only out of several co-sharers in immovable property, the proper valuation of the suit for purposes of jurisdiction is the value of the share sought to be separated from the rest of the property, and not the value of the entire property out of which the share is to be taken. Wajih-ud-din *v.* Waliullah (1902) [I. L. R., 24 All., 381

4.—Revision of valuation—*Court-fees Act (VII of 1870)—Suit for an account—Petition to increase valuation after finding by Commissioner—Increase to amount exceeding Court's jurisdiction—Return of plaint for presentation to proper Court—Material irregularity*—In a suit for an account, the usual valuation for purposes of Court fees was made in the plaint, which was filed and received in a Munsif's Court. The Munsif appointed a Commissioner to take an account, and the result was that plaintiff was found by the Commissioner to be entitled to a much larger sum [illegible]

the Munsif ordered the plaint to be returned for

VALUATION OF SUIT—*continued.*

1. SUITS—*concluded.*

presentation to the proper Court *Held* that the Munsif had acted with material irregularity in permitting the valuation of the suit to be revised; and that he ought to have tried the case. AROGYA UDAYAN *v.* APPACHI ROWTHAN (1901)

[I. L. R., 25 Mad., 543

5.—Under-valuation—*Suits Valuation Act (VII of 1887), s 11—Under-valuation of suit—Disposal of suit not prejudicially affected—Admissibility of objection on second appeal.*—The defendant in a suit raised the objection that its valuation was incorrect, and that, if correctly valued, it would exceed the jurisdiction of the Munsif's Court. The objection was overruled, both in the Munsif's Court and in that of the District Judge, but was raised again on second appeal. *Held* that the objection was one that could be raised on second appeal. *Held, also,* that, even though the suit were under-valued, as contended, the objection to it on that ground was not one that the Court would entertain, having regard to s 11 of the Suits Valuation Act (VII of 1887), inasmuch as it had not been ... reby ... *v.*

... , 43

2. APPEALS.

6.—Improper valuation—*Suits Valuation Act (VII of 1887), s. 11—Improper valuation for jurisdictional purposes—Case not finally disposed of by lower Appellate Court, but only remanded for findings—Validity of order of remand—*

...

[I. L. R., 24 Mad., 427

7.—Increase of valuation—*Jurisdiction—Bengal, N.-W. P and Assam Civil Courts Act (XII of 1887), s 21*—Plaintiff sued for an account, and valued the suit at R2,000, but added that if any further sum were found due he would pay the additional court-fee. A preliminary decree was

...

... d at R4,500 ... did not lie ... R9,000 and ... l lay to the District Judge, as the value of the suit must be considered as that stated in the plaint (R2,000).

VALUATION OF SUIT—*concluded.*

2 APPEALS—*concluded.*

NOGENDRA NATH MOZUMDAR *v.* RUSSIK CHANDRA RAI (1901) . . . 6 C. W. N., 346

8.—Partition—*Act XII of 1887 (Bengal, N.-W. P. and Assam Civil Courts Act), s 21—Act XIX of 1873 (N.-W. P Land-revenue Act), ss 113, 114—Partition—Determination by*

...

... Western Provinces Land-revenue Act, 1873, a Court of Revenue has determined a question of title, and that "the value of the original suit," if not the

...

[I. L. R., 25 All., 277

VALUE OF PROPERTY.

——as stated in sale proclamation; gross inadequacy of—

See APPEAL—EXECUTION OF DECREES—QUESTIONS IN EXECUTION

[I. L. R., 30 Calc., 617

——inquiry as to—

See COURT-FEES ACT (VII OF 1870), s. 19H . . . 6 C. W. N., 898

VARIANCE BETWEEN PLEADING AND PROOF.

	Col.
1. GENERAL CASES	1146
2 SPECIAL CASE	1147

1 GENERAL CASES

1.—Failure to establish case set up—*Practice—Pleadings—Failure of plaintiff to establish case set up by him—Right to succeed upon facts found differing from those alleged*—The plaintiff sued the defendant, alleging that the defendant was tenant of a certain house belonging to the plaintiff,

...

that he had been in adverse possession for more than twelve years. The plaintiff failed to prove the allegation of tenancy set up by him, and it was not shown that the plaintiff had been in possession within a period of twelve years from the institution of the suit *Held* that ...

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

1. GENERAL CASES—*concluded.*

Kuar (1893), I. L. R., 15 All., 186; Ali Husain v. *Ali Bakhsh, Weekly Notes, 1889, p 176;* and *Balmakund* v. *Dalu, Weekly Notes, 1901, p. 157,* referred to HAJI KHAN *v.* BALDEO DAS (1901)
[I. L. R., 24 All., 90

2.———————*Practice—Pleadings—Failure of plaintiff to prove the whole case upon which he came into Court—Plaintiff entitled to succeed on case proved, if sufficient to support a decree.*—The plaintiff came into Court alleging (1) that he was the proprietor of a certain building, and (2) that he had leased a part of the said building to the defendant, who, however, refused to pay the rent

surprise. *Abdul Gani* v *Babni, Weekly Notes, 1903, p. 18,* followed *Haji Khan* v *Baldeo Das, Weekly Notes. 1901, p. 188,* referred to. *Naiku Khan* v. *Gayani Kuar (1893), I. L. R, 15 All., 186,* overruled. *Lakshmibai* v. *Hari-bin Ravji (1872), 9 Bom H. C Rep., 6; Ramchandra* v. *Vasudev (1886), I. L. R., 10 Bom, 451,* and *Bajrang Das* v. *Nand Lal, Weekly Notes, 1884, p. 285,* distinguished. BALMAKUND *v.* DALU (F.B., 1903) . . . . . I. L. R., 25 All., 498

2. SPECIAL CASE.

3.—**Possession, suit for**—*Practice—Pleadings—Failure of plaintiff to prove the case set up* ... ase ... ime ... out ... t a ... to ... the defendant notice to quit the house. The plaintiff claimed possession and damages, but not arrears of rent. The defendant denied the tenancy alleged by the plaintiff, and asserted that she had been in adverse ... e also ... which ... The ... fter a ... at the ... at the defendant occupied the house as a friend, with the permission of the plaintiff; that the defendant had never before this asserted her title to the house, and that her possession was permissive *Held* that the plaintiff was entitled, upon the facts found, to a

VARIANCE BETWEEN PLEADING AND PROOF—*concluded.*

2. SPECIAL CASE—*concluded.*

decree for possession, notwithstanding that his case had been that the defendant was his tenant. *Bajrang Das* v. *Nand Lal, Weekly Notes, 1884, p 285,* and *Balmakund* v. *Dalu, Weekly Notes, 1901, p. 157,* distinguished ABDUL GHANI *v.* BABNI (F.B., 1902) . . . I. L. R., 25 All., 256

VATAN.

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874).

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED.
[I. L. R., 27 Bom., 75

VENDOR AND PURCHASER.

See BENAMI TRANSACTION.

See CONTRACT—

ALTERATION OF CONTRACTS—ALTERATION BY THE COURT (INEQUITABLE CONTRACTS);
[I. L. R., 25 Bom., 126

BREACH OF CONTRACT.
[7 C. W. N., 562

See LAND-REVENUE.
[I. L. R., 25 Bom., 714, 752

See LIMITATION ACT, 1877, SCH. II—

ARTS. 62, 97;
[I. L. R., 25 Bom., 593

ART. 111;
[I. L. R., 24 Mad., 233

ART. 116;
[I. L. R., 24 Mad., 233
„ 25 Mad., 55

ART. 136.
[I. L. R., 23 All., 442

1. BREACH OF COVENANT.

1.—**Covenant for quiet enjoyment**—*Sale of property—No title in vendor to part of property sold—Suit by purchaser for damages—Failure* ... *Limitation* ... *Arts. 83 and* ... , the first and ... for the third defendant, sold a certain house to the plaintiff's father. The sale-deed, which was duly registered, contained the following clause: "We (vendors) are in enjoyment of the house as its owners, and, if any one were to obstruct you in the enjoyment of the

VENDOR AND PURCHASER—*continued.*

1. BREACH OF COVENANT—*concluded.*

house, we would remove the obstruction so as to put you to no trouble." In the year 1892 the plaintiff brought a suit to recover possession of the house.

deprived of the one-third share of the house. *Held* that the claim for damages was a claim to recover money upon an existing consideration that had failed, and that it fell under Art. 97, Sch. II, of the Limitation Act (XV of 1877), and not Art. 83, and was therefore time-barred, not having been brought within three years from the failure of consideration. The clause in the sale-deed was not a contract of indemnity. It was at most a covenant for title and quiet enjoyment. The failure of consideration took place when the plaintiff endeavoured to obtain possession of the property and, being opposed, found himself unable to obtain it. *Basru Kuar v. Dhum Singh (1888), I L R, 11 All, 47,* distinguished. TULSIRAM *v* MURLIDHAR CHATURBHUJ MARWADI (1902) . I. L. R., 26 Bom., 750

2.—**Covenant to pay arrears of rent**—*Contract by vendor to pay arrears of rent—Default—Sale of part of the property, effect of—Damages*—Plaintiff purchased certain *jotes* from defendants

to comply with the stipulation in the *kobala* KUTAB ALI SHAH FAKIR *v.* AZIBULLA MONDUL (1903) [7 C. W. N., 905

2 INVALID SALES.

3.—**Notice of prior agreement to sell to another**—*Agreement to sell to A—Subsequent sale of same land to B under registered conveyance—Notice of prior agreement—Priority—Trust Act (II of 1882), s 91—Specific Relief Act (I of 1877), s. 27.*—On 25th June, 1895, the first defendant entered into an agreement to sell certain land to the plaintiff, and, six months later (19th December, 1895), he sold the same land to the second defendant and conveyed it to him by a registered

VENDOR AND PURCHASER—*continued.*

2. INVALID SALES—*concluded.*

to take possession, but was resisted by the second defendant. He thereupon filed this suit. It was found that the second defendant bought in December, 1895, with notice of the earlier agreement with the plaintiff of June, 1895. *Held* that the plaintiff was entitled to possession. The second defendant

as follows:—There should be a declaration that the second defendant holds the property for the

thikam; and a decree for possession. GAFFUR VALAD IBRAHIM FAKI *v.* BHIKAJI GOVIND (1901) [I. L. R., 26 Bom., 159

4.—**Purchaser with knowledge of liability to partition**—*Purchase by a co-sharer of part of joint property from his co-parcener—Subsequent partition of whole property—Part of property sold allotted to third person—Suit by purchaser—Covenant for title—Damages.*—The plaintiff and the defendant (with other persons) were co-sharers in certain land In 1890 the plaintiff purchased a part of this land from the defendant by

1896, in execution of the partition decree, the plaintiff was deprived of the part allotted to the third co-sharer In 1899 the plaintiff filed this suit,

appeal, the District Judge reversed that decree and awarded the plaintiff the defendant's share of the land, together with R62 as damages. *Held* that the plaintiff was not entitled to damages. There

not be removed by the seller (defendant), as was well known to the buyer (plaintiff) SHIVRAM GOVIND DESAI *v* BAL DAJI DESAI (1902) [I. L. R., 26 Bom., 519

VENDOR AND PURCHASER—*continued.*

3. VENDOR, RIGHTS AND LIABILITIES OF.

5.—Unpaid purchase-money—*Lien for unpaid purchase-money.*—Where the consideration for a sale was the immediate payment of a portion of the purchase-money and an undertaking by the purchaser as to the residue, and a part payment was made and an undertaking given in the form agreed upon: *Held* that the property passed, at law and in equity, to the purchaser, when the con-

lates, there is no lien *In re Brentwood Brick and Coal Co. (1876), L. R., 4 Ch. Div., 562; Jersey* v. *Briton Ferry Floating Dock Co. (1869), L. R., 7 Eq., 409, at p. 413; Winter* v. *Lord Anson (1827), 3 Russ., 488; (1823), 1 S. & S., 434; In re Albert Life Assurance Company (1870), L. R., 11 Eq., 164; Dixon* v. *Gayfere (1857), 1 De G. & J., 655*; *& K., 655*; 499, referred

6.——————*Transfer of Property Act, s. 55, sub-s. (4)—Vendor's statutory charge in respect of unpaid purchase-money—Effect of contract to defer payment—Certificate of appeal—Act XIV of 1882, ss. 595 (c) and 600.*—Under s. 55, sub-s. (4), of the Transfer of Property Act, a vendor has a statutory charge upon the whole of property sold, in the hands both of the purchaser and of those claiming under him, for the whole of the unpaid ... clear ... This ... the ... It is not excluded by a mere personal contract to defer payment of a portion of the purchase-money, or to take the purchase-money by instalments, or by any ...ct to the ... with the ... regard to ... certificate

4. MISCELLANEOUS CASES.

7.—Sale of zamindari share and appurtenances—*Indigo factory not appurtenant.*—On the sale of a share in *zamindari* property, buildings, such as indigo factories, will not ordinarily pass to the vendee along with the *zamindari* share sold, unless there is distinct evidence of the user of such

VENDOR AND PURCHASER—*concluded.*

4. MISCELLANEOUS CASES—*concluded.*

Debi Parshad (1874), 7 N.-W. P. H. C. Rep., 38 referred to. DURGA SINGH *v.* BISHESHAR DAYAL (1898) . . . **I. L. R., 24 All., 218**

8.—Stipulation as to payment of interest

Held that the stipulation as to the payment of interest is not conclusive to shew that the transaction is not an absolute sale but a mortgage. *Bhagwan Sahai* v. *Bhagwan Din (1890), I. L. R., 12 All., 387; Ali Ahmad* v. *Rahamtullah (1882), I. L. R., 14 All., 195*; and *Bai Motivahu* v. *Mannu Bai (1897), I. L. R., 21 Bom., 709*, distinguished. MODHU SUDAN DAS *v.* RHIDOY MONI BAISTABI (1901) . . . . . **6 C. W. N., 192**

VERDICT OF JURY.

See JOINDER OF CHARGES [5 C. W. N., 866

See REFERENCE TO HIGH COURT—CRIMINAL CASES . 7 C. W. N., 345

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.

——verdict of acquittal—

See REFERENCE TO HIGH COURT—CRIMINAL CASES . 7 C. W. N., 135

1. GENERAL CASES.

1.—Ambiguous verdict—*Criminal Procedure Code (Act V of 1898), ss. 303, 307—Jury*—

... 7 C. W. N., ...

2.—Evidence not taken—*Verdict of jury given without taking evidence, if legal.*—A verdict given on mere local inspection, and without taking evidence, by a jury appointed under s. 138, Criminal Procedure Code, is illegal. *Kailash Chunder Sen* v. *Ram Lall Mittra (1899), I. L. R., 26*

VERDICT OF JURY—*continued.*

1. GENERAL CASES—*concluded.*

Calc., 659, followed. ADHORE CHANDRA DEY *v.* AMBIKA CHURN ROY (1902) 6 C. W. N., 886

2. POWER TO INTERFERE WITH VERDICTS

3.—Appeal on facts—*Criminal Procedure Code (Act V of 1898), ss. 418, 536—Trial by jury for offence triable by jury—Verdict of acquittal—Opinion of jury of guilt in respect of offence not triable by jury—Conviction*—Two persons were charged, as first and second accused, before a Court of Session, with robbery (under s. 392 of the Indian Penal Code), and first accused was also charged with having caused grievous hurt in the course of the robbery (under s. 397). Both offences are triable,
jury, who, b
accused of t
referred to,
tarily causing grievous hurt—an offence which is triable, not by a jury, but by assessors. The Sessions Judge acquitted both accused in respect of the

the aid of the jurors as assessors. The jury having found first accused guilty of causing grievous hurt, and the Judge having given judgment convicting

4.—Duty of High Court—*Verdict of jury, disagreement with, by Judge—Reference to High Court—Procedure by High Court—Evidence, consideration of—Code of Criminal Procedure (Act V of 1898), ss. 307 and 451—Penal Code (Act XLV of 1860), ss. 147, 149, 325, 343—Assam Labour and Emigration Act (VI of 1901), s. 210.*—S. 307 of the Code of Criminal Procedure requires

VERDICT OF JURY—*concluded.*

2. POWER TO INTERFERE WITH VERDICTS—*concluded.*

that a High Court, in dealing with a case referred under it, shall consider the entire evidence on the case, and, next, after giving due weight to the opinions of the Sessions Judge and the jury, shall deliver judgment. The High Court in such a case is not bound to accept the opinion of the jury if it is not shown to be perverse or clearly or manifestly

5.— —

is erroneous; and, secondly, that the erroneousness was caused either
as to that
their part
Judge. E
(1903)

VERIFICATION.

——of plaint—

See PLAINT—VERIFICATION AND SIGNATURE

VESTED INTERESTS.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS.

See WILL—CONSTRUCTION.

VESTING ORDER.

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

See INSOLVENT ACT (11 & 12 VICT., c 21) . . I. L. R., 28 Calc., 419

VILLAGE CHAUKIDARS ACT (BENGAL ACT VI of 1870).

——s. 51—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . 7 C. W. N., 142

VILLAGE MAGISTRATE.

See COMPENSATION—CRIMINAL CASES—TO ACCUSED, ON DISMISSAL OF COMPLAINT . I. L. R., 25 Mad., 667

See CONFESSION—CONFESSIONS TO MAGISTRATE . I. L. R., 26 Mad., 38

VILLAGE MAGISTRATE—*concluded.*

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.
[I. L. R., 28 Mad., 394

VILLAGE OFFICERS.

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

VIZAGAPATAM.

See GANJAM AND VIZAGAPATAM AGENCY COURTS ACT (XXIV OF 1839).

VOLUNTARY PAYMENT.

See CONTRIBUTION, SUIT FOR—VOLUNTARY PAYMENT

See PAYMENT INTO COURT.

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

VOTING.

See COMPANY—MEETINGS AND VOTING.
[I. L. R., 27 Bom., 113

W

WAGERING CONTRACT.

See CONTRACT—WAGERING CONTRACTS.

See CONTRACT ACT, ss 20, 30 AND 65.
[I. L. R., 25 Mad., 561

WAIVER.

See ACQUIESCENCE.

See BENGAL MUNICIPAL ACT (III OF 1884), ss 238 AND 273
[5 C. W. N., 42

See EVIDENCE—PAROL EVIDENCE—EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES.
[6 C. W. N., 242

See LIMITATION ACT, 1877, SCH II, ART 179—ORDER FOR PAYMENT AT SPECIFIED DATES

——by accused—

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECT
[I. L. R., 25 All., 511

——of fresh proclamation of sale—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 24 Mad., 311
6 C. W. N., 42, 48

WAIVER—*concluded.*

——of objection—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

WAJIB-UL-URZ.

See PRE-EMPTION—

RIGHT OF PRE-EMPTION;
[I. L. R., 25 All., 90, 421

CONSTRUCTION OF WAJIB-UL-URZ.

——testamentary bequest contained in—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ADOPTION.
[I. L. R., 24 All., 195

WAQF.

See MAHOMEDAN LAW—ENDOWMENT

WARRANT.

——seal warrant—

See LIMITATION ACT, 1877, SCH. II, ART. 179—STEP IN AID OF EXECUTION . . I. L. R., 29 Calc., 580

——search-warrant—

See SEARCH-WARRANT.

WARRANT-CASE.

See DISCHARGE OF ACCUSED
[I. L. R., 28 Calc., 652

WARRANT OF ARREST.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION.
[5 C. W. N., 71

1 CIVIL CASES.

1.—Jurisdiction of High Court—*Indian High Courts Act, 1861 (24 & 25 Vict., cap. 104), s 11—Letters Patent, 1865, cl. 11—Letters Patent, 1800, cls 15 and 21—Jurisdiction of High Court to issue warrant against judgment-debtor and appoint special bailiff for its execution*—A Judge, in the exercise of the ordinary original civil jurisdiction of the High Court at Madras, directed a warrant to issue against the person of a judgment-debtor, and appointed a special bailiff to execute the warrant of arrest against the judgment-debtor, wherever he might be found in the Presidency

WARRANT OF ARREST—*continued.*

1. CIVIL CASES—*continued*

of Madras. *Held* that the order was made without jurisdiction. *Sagore Dutt* v. *Ramchunder Mitter, 1 Hyde, 136*, referred to *Monomothu Nath Dey* v. *Greender Chundu Ghose and others, 24 W. R., 366*, referred to. *Jamuna Bhai* v. *Sadagopa, I. L. R., 7 Mad., 56*, referred to RAJAH OF RAMNAD v. SEETHARAM CHETTY (1902)

[I. L. R., 26 Mad., 120

2.—**Showing warrant**—*Penal Code (Act XLV of 1860), ss 353, 225B—Assaulting a public officer in execution of his duties—Resisting or obstructing public officer in discharge of his duties as such—Warrant, execution of, by person not authorized—Warrant of arrest, issue of, in execution of a Civil Court decree—Notification of contents of warrant, if necessary—Lawful arrest.*

[illegible]

the person with the contents of the warrant at the time he arrests him, and with the fact that he was authorized to arrest him, and if the accused then wants to see the warrant it would be the duty of the bailiff to show it to him When a warrant is not shown to the person arrested, and the contents of the warrant are not notified to him, before or at the time of the arrest, there is no lawful arrest IN THE MATTER OF RAJANI KANTO PAL v. EMPEROR (1901)

[5 C. W. N., 843

3.—**Signature of warrant**—*Indian Penal*

[illegible]

any other warrant issued in execution of a decree,

[illegible]

cedure Code, as the provision for variation in s 644, Civil Procedure Code, shows, cannot be taken as implying a direction that a warrant for arrest, in

[illegible]

Penal Code From the mere fact that the warrant for arrest of a judgment-debtor bore the signature of the *sharistadar*, it cannot be presumed, under s. 114, cl (*e*), Indian Evidence Act, that the *sharistadar* had been duly appointed to sign warrants. Evidence of the fact of appointment is necessary. *Per* HARINGTON, J.—S. 114, cl. (*e*), Indian Evidence Act, authorises the presumption that a particular judicial or official act which has been performed has been performed regularly, but it does

WARRANT OF ARREST—*concluded.*

1. CIVIL CASES—*concluded.*

not authorize the presumption, without any evidence, that the act has been performed DEPUTY LEGAL REMEMBRANCER v. MIR SARWAR JAN (1902)

[6 C. W. N., 845

2. CRIMINAL CASES.

[illegible]

law When an endorsement is made only by initials, which are proved or identified to be of the proper person, the warrant does not become invalid by reason merely of the endorsement being by initials ABDUL SIKDAR v. MATHU SINGH (1901)

[5 C. W. N., 447

5.—**Wrong description of accused**—*Onus of*

[illegible]

Code of such accused person, who resisted or used criminal force upon his being arrested under such warrant, is illegal In order to have a conviction for an illegal disobedience of a warrant, the *onus* is on the prosecution to show that the accused is the person against whom the warrant has issued. It is not for the accused to show that he is not the person against whom the warrant was issued DEBI SINGH v QUEEN-EMPRESS (1901)

[I. L. R., 28 Calc., 399;
s.c., 5 C. W. N., 413

WARRANT OF ATTACHMENT.

—**Warrant issued by Civil Court**—*Resistance to execution of—Legality of warrant—Rioting—Legal common object—Penal Code (Act XLV of 1860), ss 141, 147 and 325—Civil Procedure Code (Act XIV of 1882), Sch IV, Form No. 136.*—Where resistance was made to the execution of a

[illegible]

name of the judgment-debtor *Held* that the warrant was not one which could lawfully be executed against

[illegible]

WARRANT OF ATTACHMENT—*concluded.*

offence under s. 325 of the Penal Code was lawful. *Held, also,* that s 141, cl. (2), of the Penal Code does not have the effect of making an assemblage of persons [illegible] which [illegible]
UMA [illegible]

WARRANT OF EXECUTION.

—*Warrant, validity of—Attachment of property in execution of an invalid warrant—Resistance or obstruction to such execution—Re-issue of warrant after expired date, legality of—Penal Code (Act XLV of 1860), ss. 183, 186.*—A warrant for realization of money due under a certificate from a Revenue [illegible]

[illegible] by the Nazir and made returnable on the following day. In execution of this warrant certain cattle belonging to the judgment-debtor were attached, and these were taken away by the debtor's men, who pushed one of the *peons.* The debtor's men were thereupon prosecuted for and convicted of offences under ss. 183 and 186 of the Penal Code. *Held* that, after the return of the 3rd March was made, the warrant ceased to be a valid warrant, and it could not be re-issued in that form. *Also* that, the warrant being illegal, no offence relating to the execution of such warrant was committed by the persons resisting such execution. ADHAR MIDDAY v. EMPRESS (1900) . . 5 C. W. N., 391

WARRANTY, BREACH OF.

See INSURANCE—LIFE INSURANCE.
[I. L. R., 25 Mad., 183

—*Sample—Jute—Examination—Proof of inferiority of quality—Opportunity of examining the bulk—Mode of examining sample* —There may be cases in which the Court would be justified in drawing an inference as to the quality of the bulk from the quality of the sample, *e.g.,* in a case in which the plaintiff had no opportunity of examining and testing the bulk; but the Court would not condemn the bulk as of inferior quality on proof of the inferiority of a sample, if the plaintiff had the opportunity of examining the bulk but adduces no evidence to prove its quality. In examining a certain number of bales of goods taken as a sample, the entire quantity in each bale, and not merely a portion, should be examined. It is not proper to examine a portion merely of each such bale and to assume that the residue would be of quality similar [illegible]

WASTE.

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—SETTING ASIDE ALIENATIONS, AND WASTE.

WASTE LANDS.

See LANDLORD AND TENANT—NATURE OF TENANCY.
[I. L. R., 28 Calc., 693

WATER.

See RIGHT TO USE OF WATER

WAY.

See RIGHT OF WAY.

WHIPPING.

1.—Added to imprisonment—*Whipping Act* [illegible]

[illegible] imprisonment is not legal in the case of a conviction of dacoity which was committed prior to the previous conviction of a similar offence *Reg.* v. *Surya (1866), 3 B. H. C. R., Cr. C., 38;* and *Reg.* v. *Kusa (1870), 7 B. H. C. R., Cr. C., 70,* followed KING-EMPEROR v. BABYA BHIVA (F.B., 1901)
[I. L. R., 25 Bom., 712

2.—Postponement—*Criminal Procedure Code (Act V of 1898), ss 391, 407—Sentence of whipping by Second-class Magistrate—Appeal—Application for postponement of sentence till hearing of appeal—Refusal—Validity.*—When a Second-class Magistrate passes a sentence of whip- [illegible]

[illegible] v. EMPEROR (1902) . I. L. R., 26 Mad., 465

WHIPPING ACT (VI OF 1864).

See WHIPPING.

WIDOW.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.
[7 C. W. N., 678

See HINDU LAW—

ALIENATION—ALIENATION BY WIDOW;

MAINTENANCE—RIGHT TO MAINTENANCE—

DAUGHTER;
[I. L. R., 28 Calc., 278

SON'S WIDOW;

WIDOW;

WIDOW—*concluded.*

See HINDU LAW—*concluded.*

PARTITION—RIGHT TO PARTITION —WIDOW;

WIDOW.

See MAHOMEDAN LAW—

DOWER;

WIDOW.

WIFE.

See DEFAMATION—IMPUTATION ON A WIFE.

See HINDU LAW—HUSBAND AND WIFE

See HUSBAND AND WIFE

See MARRIED WOMAN.

See RESTITUTION OF CONJUGAL RIGHTS.

——costs of—

See DIVORCE ACT (IV OF 1869) [I. L. R., 30 Calc., 631

See DIVORCE ACT (IV OF 1869), s. 7. [I. L. R., 29 Calc., 619

——maintenance of—

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO

WILL.

See HINDU LAW—

ADOPTION—WHO MAY OR MAY NOT ADOPT, [I. L. R., 26 Bom., 491

WILL.

See MAHOMEDAN LAW—WILL

See ONUS OF PROOF—WILL.

See PRACTICE—CIVIL CASES—PROBATE [I. L. R., 30 Calc., 528

See PROBATE.

——construction of—

See EXECUTOR. I. L. R, 26 Bom., 571

See HINDU LAW—GIFT—CONSTRUCTION OF GIFTS . I. L. R., 29 Calc., 260

See LIFE ESTATE . 5 C. W. N., 569

——execution of—

See PARDANASHIN WOMEN [5 C. W. N., 505

——invalidity of—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT [5 C. W. N., 383

WILL—*continued.*

——pencil alterations in—

See PROBATE—OF WHAT DOCUMENTS GRANTED . I. L. R., 29 Calc., 311

1. VALIDITY OF WILL.

1.—Addendum—*Will of Oudh Talukdar not registered under Oudh Estates Act (I of 1869), s 13—Subsequent addendum executed and duly registered, referring to and explaining will.*—Where a will made by an Oudh *Talukdar* was executed on the 29th of April, 1881, but was not registered within one month of its execution, under s. 13 of the Oudh Estates Act (I of 1869), and on the 26th of April, 1883, an *addendum* was made to it, in which the will was referred to and explained, and the *addendum* was then duly executed as a will and registered on the same day, an objection that the original will had not been registered in accordance with s 13 of the Oudh Estates Act, and was therefore invalid, was overruled, and the document was held to be effective as a testamentary instrument, whether the *addendum* was regarded as a codicil or a will. SATRUPA KUNWAR *v.* HULAS KUNWAR (1902) [I. L. R., 25 All., 121

2.—Forged will—*Probate and Administration Act (V of 1881), s. 84*—Acts done by a person under a title created by a will which has been declared to be a forgery are void. But any lawful payments made by a person to whom probate of such a will was granted but subsequently revoked may be re-imbursed out of the estate of the deceased, under s. 84 of the Probate and Administration Act. PUNDIT PRAYRAG RAJ *v.* GOUKARAN PERSHAD TEWARI (1902) . . 6 C. W. N., 787

3.—Unsoundness of mind—*Application for probate—Plea of unsoundness of mind on the part of the testator—Burden of proof*—If a party writes or prepares a will under which he takes a benefit, or if any other circumstances exist which excite the suspicion of the Court, and whatever their nature may be, it is for those who propound the will to remove such suspicion, and to prove affirmatively that the testator knew and approved the contents of the will; and it is only where this is done that the *onus* is thrown upon those who oppose the will to prove fraud, or undue influence, or whatever they rely on to displace the case for proving the will.

2 CONSTRUCTION.

4.—Attesting legatee—*Succession Act (X of 1865), ss 90, 94—Bequest to three children "or the survivors or survivor of them"—Incapacity of one to take by his attestation of the will—Residuary bequest to widow—Construction—Doctrine*

WILL—*continued.*

2. CONSTRUCTION—*continued.*

of acceleration.—By his will, a testator, after giving a life interest in certain property to his wife, directed that after her death the property should be divided into equal shares between his "three children, James, Cornelius and Florence, or the survivors or survivor of them;" and the will contained a residuary bequest in favour of the wife. James (who was appointed a trustee) was an attesting witness to the will. The widow having died, Florence brought this suit, seeking to have it declared that James was incapacitated from taking under the will (by reason of his having attested it) and that she was entitled to a moiety of the property bequeathed *Held* that the share of the legacy to James, which had lapsed, fell into the residue. The effect of the bequest to the three children "or the survivors or the survivor of them" would, in case James had predeceased the testator, have been to take the case out of the ordinary rule that a legacy lapses where the legatee dies during the lifetime of the testator. But, as the two children had not survived James, the contingency on the happening of which they were to take had not happened. The testator having made a testamentary disposition which was incapable of

5.—Bequest to "eldest son to be born"—*Bengali will—Terms of art—Words, of direct and*

propriety of—Ex parte hearing—Re-hearing, application by respondent for—Unconscionable bargain.—In construing Bengali wills, it must be remembered that there is no line of precedents attaching to Bengali terms meanings which make them understood as terms of art by Bengali lawyers. The only safe course is to give to the words their plain and ordinary meaning There are no particular words necessary to the vesting of a bequest or a legacy. The words "*paryapta haibek*" whether they mean "descend to" or "devolve or go" or "shall become vested," have the effect of vesting the legacy at once Where there is a bequest in favour of a person simply, it confers a vested interest, and the appointment of an executor and

with propriety rest it on the authority of one who has not heard the arguments and is not responsible for the decision, though he also may be a Judge of the High Court. *F* had in August, 1892, sold her interest in a certain moiety under a will, together with an allowance of R50 per month, which she took under the will, to one *A L B*, and *W* on the same date disposed of all his interest in the said moiety to

WILL—*continued.*

2. CONSTRUCTION—*continued.*

A L B, who assigned the interest he took under both sales to *H* for R9,000. In a suit by *H* in 1895 for construction of the will, and for a declaration of the rights of the parties under it, the High Court, on the view that *F* would, on their construction of the will, be entitled to a large amount of accumulations of the moiety, which together with her allowance she had been induced to part with to *A L B* for only R3,000, *held*, on the facts, that the bargain was an unconscionable one and could not be sustained. On the construction

6.—Charitable gift—*Succession Act (X of 1865), ss. 90 and 105—Hospitals, gifts to—Registration of gifts to hospitals—Corporate bodies,*

Held

the Hospital named. The gift was accordingly valid. FANINDRA KUMAR MITTER *v.* ADMINISTRATOR-GENERAL OF BENGAL (1901) . 6 C. W. N., 321

7. ——— *Charitable purposes—Uncertainty.*—A testator directed that after the death of his wife, and in default or on failure of issue, his trustees should bestow certain trust premises and the interest, dividend and income thereof "upon some

philan-
to pro-
scretion
oil for
5 *Cl. &*
DADY

, 632

WILL—*continued.*

2. CONSTRUCTION—*continued.*

8. ——————— *Succession Act (X of 1865), s 105—Bequest to charitable uses by a testator leaving a widow him surviving—Validity—"Nearer relative" than a nephew or niece*—By s 105 of the Indian Succession Act, no man having a nephew or niece or any "nearer relative" shall have power to bequeath any property to charitable uses,

9.—**Executor**—*Suit by legatee against executor for arrears of rent—Limitation*—A Hindu died leaving a son, a daughter, a widow and a brother's widow He left a will whereby he directed that the two widows should receive "half and half" the annual income realized from the four houses which he specified, and that on the death of one of them the survivor should take the whole for her life The son was to make repairs and to pay the municipal taxes payable in respect of the said houses, but he was to have "no manner of right whatever to the income" thereof He was also to provide the widows with food and

the arrears of rent for the whole period claimed RAMDHAN *v* MANIBAI (1900)
[I. L. R., 25 Bom., 429

10. ——————— The testator in his will made use of the following expression with reference to expenses for *pujahs*, etc —" You (*i e*, the executors) are to pay my share of the expenses whatever

BOSE (1902) . . I. L. R., 30 Calc., 369; [s.c., 7 C. W. N., 353

WILL—*concluded.*

2. CONSTRUCTION—*concluded.*

11.—**Executor by implication**—*Probate and Administration Act (V of 1881), s. 7—Will, construction of—Osees—Co-adjutor—Overseer*—On a construction of the will, held that the *shebait* was appointed executor of the will by necessary implication, within the meaning of s. 7 of the Probate and Administration Act, and that the persons appointed as *osees* were merely co-adjutors or overseers BROJO CHUNDER GOSWAMI *v* RAJ KUMAR ROY (1901)
[6 C. W. N., 310

made to the legatee on his attaining majority, and that the will conferred on the executor no right to the income The executor applied for leave to appeal to the Privy Council, and contended that the matter in dispute was of the value of R10,000, as required by s 596 of the Civil Procedure Code, inasmuch as it involved the right to the whole fund.

as a trustee, and the only question was as to the income HUSENBHOY AHMEDBHOY *v* AHMEDBHOY HABIBBHOY (1901) . I. L. R., 26 Bom., 319

WINDOW.

See PRESCRIPTION—EASEMENTS—

LIGHT AND AIR; [I. L. R., 26 Bom., 374

PRIVACY . 5 C. W. N., 147

WITHDRAWAL OF APPEAL.

See APPEAL—OBJECTIONS BY RESPONDENT —WITHDRAWAL OF APPEAL.

WITHDRAWAL OF CRIMINAL PROCEEDINGS.

See COMMITMENT . 5 C. W. N., 411

See MAGISTRATE—WITHDRAWAL OF CASES.

WITHDRAWAL OF SANCTION TO BUILD.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888), ss. 247, 250, 427 . . I. L. R., 30 Calc., 317

WITHDRAWAL OF SUIT.

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 I. L. R., 24 Mad., 293

1.—**After award made**—*Civil Procedure Code (Act XIV of 1882), s 373 and Ch. XXXVII—Withdrawal of suit after an award is made by an arbitrator.*—The powers relating to withdrawal of suits, conferred upon the Court by s. 373, Civil Procedure Code, are, when an award of an arbitrator to whom the case is referred for arbitration has once been duly made by the arbitrator, limited by the particular provisions contained in Ch. XXXVII of that Code So, where, upon an award made by the arbitrator, the plaintiff put in a petition of objection to the award, and subsequently, on his putting in a petition for permission to withdraw the suit with liberty to bring a fresh suit, the Court granted such prayer under s. 373, Civil Procedure Code: *Held* that the order of the Court was without jurisdiction. DEBI CHURN MANNA *v.* BIPRA PROSAD JANA (1902) . . 7 C. W. N., 186

2.—**By Small Cause Court, after granting a new trial**—*Presidency Small Cause Courts Act (XV of 1882, as amended by Act I of 1895), s. 38—New trial—Civil Procedure Code (Act XIV of 1882), s 373—Withdrawal of a suit—Jurisdiction of the Small Cause Court to pass an order under s. 373 of the Civil Procedure Code after*

[illegible]

revisional jurisdiction ceased, and then they had [illegible] Original Court, [illegible] pass the order [illegible] Code. JADU [illegible] CHAKRAVARTI (1902) . . . . I. L. R., 29 Calc., 239

3.—**Effect of withdrawal**—*Civil Procedure Code, s. 373—Suit for partition—Withdrawal of suit—Joint petition of parties, praying that the suit might be struck off—Subsequent suit for partition of same property barred.*—The plaintiff and the defendants in a suit for partition, having arrived [illegible]

The terms of the compromise were not, however, inserted in the decree, and were never carried out.

WITHDRAWAL OF SUIT—*concluded.*

Subsequently the plaintiff brought a second suit for partition of the same property. *Held* that it was incumbent on the plaintiff to see that the Court did its duty and recorded a proper order in the suit with reference to s. 375 of the Code of Civil Procedure, and that, as he had not done so, he must be taken to have [illegible]

4. ———— *Limitation Act (XV of 1877), Sch II, Art. 120—Alienation by widow—Subsequent suit to set it aside—Withdrawal of suit without permission to bring a fresh suit—Confirmation of original alienation—Fresh cause of action to sons of the daughters*—V, who was [illegible]

[illegible]

(1902) . . . . I. L. R., [illegible]

WITNESS—CIVIL CASES.

See COMMISSION—CIVIL CASES. [7 C. W. N., 806

——**attestation by**—

See DEED—ATTESTATION. [7 C. W. N., 384

——**competency of**—

See DEED—EXECUTION [5 C. W. N., 454

——**cross-examination of, on commission**—

See PRACTICE—CIVIL CASES—COMMISSION . I. L. R., 30 Calc., 625

——**damage by false statement of**—

See DEFAMATION . 5 C. W. N., 293

WITNESS—CIVIL CASES—*continued.*

1. SUMMONING AND ATTENDANCE OF WITNESSES

1.—Postponement—*Direction of Court—Adjournment for production of witnesses—Irregularity or error affecting merits—Code of Civil Procedure (Act XIV of 1882), s. 578*—The question of the proper exercise of discretion of lower Courts to grant time to parties to produce further evidence discussed. SURJYAMONI DASI *v.* KALI KANTA DAS (1900). . I. L. R., 28 Calc., 37; [s.c., 5 C. W. N., 195

2.——————*Civil Procedure Code (Act XIV of 1882), s 162—Summons forms Nos. 125, 126—Summons to witness—Postponement of hearing of case—Necessity for issuing fresh summons—Practice*—When a witness has been summoned to give evidence in a case which is not reached, it is not necessary to issue a fresh summons to the witness. He need only be warned that his attendance will be required on the day to which the hearing of the case may be postponed. SUBBARAYADU *v.* CHENCHURAMAYYA (1900)

[I. L. R., 24 Mad., 200

2. EXAMINATION OF WITNESSES.

CROSS-EXAMINATION

3.—*Witness proving hostile; refusal by Court of permission to cross-examine, effect of*—Where one's own witness unexpectedlly makes statements ... the ... ested ... elied ... the evidence is of no value KALAGURLA SURYANARAYANA *v.* YARLAGADDA NAIDOO (P C, 1902)

[6 C. W. N., 513

3 CONSIDERATION AND WEIGHT OF EVIDENCE

4.—*Findings of fact by first Court, upset by Appellate Court—Credibility of witnesses—Witness proving hostile, refusal by Court of permission to cross-examine, effect of—Documentary evidence, direct and indirect, in respect of business transactions, relative value.*—A case in which the Appellate Courts questioned the credibility of witnesses ...

... allowed the evidence is of no value *J*, a trader in ...

WITNESS—CIVIL CASES—*concluded.*

3. CONSIDERATION AND WEIGHT OF EVIDENCE—*concluded.*

against *J*, at which, in spite of *J*'s plea of payment to *B* and evidence by him and *K* to that effect, *J* was declared an insolvent Later on, *B* on behalf of *Y* ...

... *J* and other persons ...

WITNESS—CRIMINAL CASES.

See ACCOMPLICE

See APPROVERS.

See EVIDENCE—CRIMINAL CASES

See FALSE EVIDENCE

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—EVIDENCE, MODE OF TAKING, ETC

——deposition of—

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

——evidence of witness partly against and partly in favour of accused—

See CRIMINAL PROCEDURE CODE, s. 436.

[5 C. W. N., 574

WITNESS—CRIMINAL CASES—*continued.*

——examination of, by Court—

See EVIDENCE—CRIMINAL CASES—DYING DECLARATION . . 6 C. W. N., 72

——examination of, in absence of accused—

See ACCUSED PERSON 5 C. W. N., 110

——examination of; opportunity to accused to cross-examine—

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—EXAMINATION BY COURT.

[I. L. R., 29 Calc., 387

——privilege of—

See DEFAMATION

1. PERSONS COMPETENT OR NOT TO BE WITNESSES.

1.—Accused persons who have been discharged—*Criminal Procedure Code (Act V of 1898), ss. 337 and 494—Withdrawal ... —Dischar ... persons ca ... Practice —* consent of ... of two out of several accused persons tried jointly for an offence under s. 4 of the Gambling Act (Bombay Act IV ... thereu ... Crimin ... examir ... (Whi ... discha ... EMPRE ...

[I. L. R., 25 Bom., 422

2.—Child—*Act I of 1872 (Indian Evidence Act), s. 118—Evidence—Competency ...*

... High Court observed :—" In our opinion the learned Judge, specially considering the importance of the witness, ought not to have refrained from examining him, unless, under the words of s. 118 of the Indian Evidence Act, he considered that the boy was prevented from understanding the questions put to him, or from giving rational answers to those questions, by reason of tender years " QUEEN-EMPRESS *v.* RAM SEWAK (1900) . . I. L. R., 23 All., 90

2. SUMMONING WITNESSES.

3.—Obligation to summon—*Duty of Court as to summoning witnesses*—In this case a rule was obtained by the petitioners, Madhab Chandra Tanti and others, calling upon the District Magistrate of Burdwan to show cause why the order under s. 145 of the Criminal Procedure Code should not be set aside on the ground that the Magistrate should have allowed

WITNESS—CRIMINAL CASES—*continued.*

2. SUMMONING WITNESSES—*continued.*

summons to issue on the witnesses cited by the petitioners on the 7th October, 1901, notwithstanding the reasons given by him for refusing to do so. MADHAB CHANDRA TANTI *v.* MARTIN (1901)

[I. L. R., 30 Calc., 508

4 ———— Under s. 540 of the Code of Criminal Procedure, a Court is bound to summon and examine any witness whose evidence may seem to be essential to a proper and just decision of the case. RAM SARUP RAI *v.* EMPEROR (1901)

[6 C. W. N., 98

5.———— *Process—Process to compel attendance of witness ...*

... ary power given in summons-cases to a Magistrate by s. 244 of the Criminal Procedure Code to refuse to compel the attendance of a witness upon whom the Court has already issued process. DAULAT SINGH *v.* BRINDA BELDER (1902) I. L. R., 30 Calc., 121

6 ———— *Duty of Court as to summoning Witnesses—Jurisdiction—Criminal Procedure Code (Act V of 1898), ss. 145, 355, 356—Witness, attendance of—Process, refusal to issue—Magistrate, discretion of—High Court, power of interference by—Charter Act (24 & 25 Vict., c. 104), s. 15—Proceedings under Ch. XII of the Criminal Procedure Code.* Where the refusal ...

... denial of justice: *Held* that the Magistrate in refusing process acted without jurisdiction *Madhab Chandra Tanti v. Martin (1901), I. L. R., 30 Calc., 508,* referred to. The High Court, in the exercise of general powers of supervision vested under 24 & 25 Vict, c. 104, s. 15, has power to interfere in a case like this, even if it cannot, in strictness, be said that the Magistrate acted without jurisdiction ...

... regarded, as to procedure, as summons cases. *Hurendra ... Bhobani ... 762,* and ... *93), I L.* ... KANTA ACHARJEE *v.* HEM CHUNDER CHOWDHRY (1902)

[I. L. R., 30 Calc, 508;
s.c., 7 C. W. N., 404

7.———— *Party's right to compel attendance of a defaulting witness—Order, Magis-*

WITNESS—CRIMINAL CASES—*continued.*

2. SUMMONING WITNESSES—*concluded.*

trate's, upon applications—Irregularity—Criminal Procedure Code (Act V of 1898), ss. 133, 137—In every petition made before him, a Magistrate should make an order either granting or refusing it. An order merely to "file" it is improper. A party has a right to call upon the Court to compel the attendance of witnesses who had been summoned and had neglected to attend. So, when, in a proceeding under

DIGAMBAR DAS (190-) . . . C. W. N., 545

8. ———— *Witness for defence, attendance, Judge's duty to enforce*—It is not for the Judge, but for the accused himself, to decide what

9. ———— *Criminal Procedure Code (Act V of 1898), ss. 257, 177, 110—Security for good behaviour—Magistrate—Summons—Refusal to summon—Procedure.*—S. 257 of the Criminal Procedure Code (Act V of 1898) is imperative in its terms. It leaves to a Magistrate no discretion to refuse to issue process to compel the attendance of any witness, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice: such ground, however, must be recorded by him in writing. The discretionary power of refusing to summon any particular witness is vested in the Magistrate, but the order of refusal must be such as to show in writing the ground of refusal as applied to each individual. EMPEROR *v.* PURSHOTTAM KARA (1902) . . . . I. L. R., 26 Bom., 418

3. STATEMENTS OF WITNESSES.

10 — *Witnesses, statements of—Police investigation—Power of Magistrate to record statements not voluntarily made—Duty of police when fear of witnesses being gained over—Magistrates, Bench of; power of member to act independently—Murder—Suspicion—Criminal*

WITNESS—CRIMINAL CASES—*continued.*

3. STATEMENTS OF WITNESSES—*concluded.*

s. 164 of the Criminal Procedure Code, on the ground that there was every chance of their being gained

he accused,

I that the

witnesses

they did not

Honorary

[I. L. R., 29 Calc., 483: s.c., 6 C. W. N., 596

4 EXAMINATION OF WITNESSES.

(*a*) GENERALLY.

11 — *Witnesses for the defence, omission to file list of, effect of, when witnesses actually in attendance—Adjournment asked for examining witnesses, grounds for refusing—Sitting of Court*

ng a

their

have

for

an adjournment, so as to examine certain witnesses

opportunity to examine such witnesses as they might wish to produce on their behalf EMPEROR *v.* KESO SINGH (1903) . . . 7 C. W. N., 714

(*b*) EXAMINATION BY COURT.

12.—*Witness examined by Court—Opportunity to accused to cross-examine—Dishonestly receiving stolen property—Criminal Procedure Code (Act V of 1898), ss. 233 and 540.*—During the trial of a case,

WITNESS—CRIMINAL CASES—*concluded.*

4. EXAMINATION OF WITNESSES—*concluded.*

(*b*) EXAMINATION BY COURT—*concluded.*

[illegible]

the witness attended, the accused declined to examine him. He was thereupon examined by the Court; and, upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so. *Held* that, under the circumstances, the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross-examine him MOHENDRO NATH DAS GUPTA *v.* EMPEROR (1902) . I. L. R., 29 Calc., 387; [s.c., 6 C. W. N., 550

(*c*) CROSS-EXAMINATION.

13.—*Accused—Defence—Evidence Act (I of 1872), s. 154—Code of Criminal Procedure (Act V of 1898), s 257—Prosecution*—Certain witnesses for the prosecution were examined. The accused applied to the Court for an adjournment, to enable [illegible]

nesses were summoned, and, when Counsel for the accused proceeded to cross-examine them, he was not allowed to do so. *Held* that the mere fact that the accused had been compelled to treat the witnesses for the prosecution as their own witnesses did not change their [illegible] con[illegible] the [illegible] of t[illegible] of [illegible] in [illegible] PRAKASH SINGH *v.* RAWLINS (1901) [I. L. R., 28 Calc., 594

14.—*Criminal Procedure Code (Act V of 1898)—Cross-examination of prosecution witnesses—Expenses of recalling witnesses*—Where the witnesses for the prosecution were cross-examined before the framing of the charge, on the understanding that the accused would not require the witnesses to be recalled for further cross examination after the charge: *Held* that it was not open to the Magistrate to refuse the application of the accused that the witnesses might be recalled after the charge had been framed. *Also*, that, in the circumstances, it was proper that the accused should pay the expenses of recalling witnesses, which they had offered to pay KOKIL GHOSE *v.* KASIMUDDI MALITA (1902) [6 C. W. N., 434

WOMAN.

See DAUGHTER.
See DAUGHTER-IN-LAW.
See MARRIED WOMAN.
See PARDANASHIN WOMEN.
See WIDOW.
See WIFE

WORDS.

——"abatement of rent", in Act XII of 1881, Ch. II—

BENI PRASAD KUARI *v.* DUKHHI RAI (1901) . . I. L. R., 23 All., 270

——absence—

See post, "IN THE ABSENCE OF A CONTRACT TO THE CONTRARY."
See post, "IN THE EVENT . . . OF HIS ABSENCE, ETC."

——"abstain from a certain act", in Act V of 1898, s. 144—

QUEEN-EMPRESS *v.* ABDULLA SAHEB (1900) . I. L. R., 24 Mad., 262

RAMANADHAN CHETTI *v.* MURUGAPPA CHETTI (1900) [I. L. R., 24 Mad., 45

——abwab—

See post, "ALL IMPOSITIONS UPON TENANTS UNDER THE DENOMINATION OF ABWAB."

——access—

See post, "PLACE TO WHICH THE PUBLIC HAVE ACCESS."

——accordance—

See post, "IN ACCORDANCE WITH LAW."

——"accused person", in Act V of 1898, s. 437—

IMAN MANDAL *v.* EMPRESS (1900) [6 C. W. N., 163

——act—

See ante, "ABSTAIN FROM A CERTAIN ACT."

——"actionable claim", in Act IV of 1882, s. 135—

MATHURA DAS *v.* MURLIDHAR (1902) [I. L. R., 24 All., 517

——"actual possession"—

BATUL BEGAM *v.* MANSUR ALI KHAN (1901) . . I. L. R., 24 All., 17: [s.c., L. R., 28 I. A., 248; 5 C. W. N., 833

——add—

See post, "SHALL ADD TO ANY EXISTING EMBANKMENT."

——adjusted—

See post, "IF A SUIT BE ADJUSTED."

——administration—

See post, "WHENEVER THE DIRECTION OF THE COURT IS DEEMED NECESSARY FOR THE ADMINISTRATION OF SUCH TRUST."

WORDS—*continued.*

—"affecting the decision of the case", in Act XIV of 1882, s. 591—

GULAB KUNWAR *v.* THAKUR DAS (1902) [I. L. R., 24 All., 464

TASADDUQ HUSAIN *v.* HAYAT-UN-NISSA (1903). I. L. R., 25 All., 280

—aggrieved—

See post, "PERSON AGGRIEVED."

—agricultural purposes—

See post, "SOLELY FOR AGRICULTURAL PURPOSES."

—alienate—

See post, "NO POWER TO ALIENATE."

—"all impositions upon tenants under the denomination of abwab", in Act VIII of 1885, s. 74—

JOTINDRA MOHAN TAGORE *v.* CHANDRA NATH SAPUI (1902) [6 C. W. N., 360

—"all proceedings under this Act between party and party", in Act IV of 1869, s. 45—

RAMSAY *v.* BOYLE (1903) [I. L. R., 30 Calc., 489

—"all stipulations and reservations for the payment of such", in Act VIII of 1885, s. 74—

JOTINDRA MOHAN TAGORE *v.* CHANDRA NATH SAPUI (1902) [6 C. W. N., 360

—"all the parties to a suit", in Act XIV of 1882, s. 506—

PITAM MAL *v.* SADIQ ALI (1898) [I. L. R., 24 All., 229

—alter—

See post, "MATERIALLY ALTER THE STRUCTURE OF ANY HOUSE"

—"always and for ever"—

AZIZ-UN-NISSA *v.* TASSADUQ HUSAIN (1901) [5 C. W. N., 569: s.c., I. L. R., 23 All., 324; L. R., 28 I. A., 65

—"and it shall be also lawful for the Court, on those or any other occasions", in 11 & 12 Vict., c. 21, s. 36—

IN THE MATTER OF CHUNI LAL OSWAL (1902) . I. L. R., 29 Calc., 503

—"any dispute shall arise respecting the right of succession", in Act XX of 1863, s. 5—

GOPALA AYYAR *v.* ARUNACHALLAM CHETTY (1902) I. L. R., 26 Mad., 85

WORDS—*continued.*

—any interest—

See post, "DEVOLUTION OF ANY INTEREST."

—"any other reasonable cause", in Act XVIII of 1879, s. 13 (*f*)—

IN THE MATTER OF JOGENDRA NARAYAN BOSE (1900) . 5 C. W. N., 48

LEMESURIER *v* WAJID HOSSAIN (F.B., 1902) . I. L. R., 29 Calc., 890; s.c., 6 C. W. N., 556

—"any person having any interest in or charge upon the property", in Act IV of 1882, s. 91 (*a*)—

GIRISH CHUNDER DEY *v.* JURAMONI DE (1900) . . 5 C. W. N., 83

—"any person whose immovable property has been sold", in Act XIV of 1882, s. 310A—

KEDAR NATH SEN *v.* UMA CHARAN (1900) [6 C. W. N., 57

—"any such offence", in Act XLV of 1860, s. 224—

DEO SAHAY LAL *v* QUEEN-EMPRESS (1900) [I. L. R., 28 Calc., 253; s.c., 5 C. W. N., 289

—any sufficient cause—

See post, "PREVENTED BY ANY SUFFICIENT CAUSE"

—"anything which the landlord is, under this Act, required or authorised to do", in Act VIII of 1885, s. 188—

SHER BAHADUR SAHU *v* MACKENZIE (1902) . 7 C. W. N., 400

—appeal—

See post, "COURT TO WHICH APPEALS ORDINARILY LIE"
See post, "ORDER MADE ON APPEAL."

——, in Act XV of 1877, s. 5—

SARAT CHANDRA DEY *v.* BROJESHWARI DASSI (1903) [I. L. R., 30 Calc., 790

—application—

See post, "PERSON ENTITLED TO INSTITU SUIT OR MAKE AN APPLICATION"

—apprehension—

See post, "ASSISTING A PERSON IN ANY WAY TO EVADE APPREHENSION."

—area—

See post, "THE AREA FOR WHICH RENT HAS BEEN PREVIOUSLY PAID"

WORDS—*continued.*

——armed—

See post, "GOES ARMED."

——article—

See post, "MEDICATED ARTICLE."

——assessment—

See post, "SETTLEMENT OF THE ASSESSMENT."

——"assistance", in Act XLV of 1860, s. 187—

IN THE MATTER OF RAMAYA NAIKA (F.B., 1903) [I. L. R., 26 Mad., 419

——"assisting a person in any way to evade apprehension", in Act XLV of 1860, s. 216B—

EMPEROR *v.* HUSAIN BAKSH (1903) [I. L. R., 25 All., 261

——"attestation"—

DINAMOYEE DEBI *v.* BON BEHARI KAPUR (1902) . . 7 C. W. N., 160

——"attested," in Act IV of 1882, s. 59—

RAMJI HARIBHAI *v.* BAI PARVATI (1902) [I. L. R., 27 Bom., 91

——authorised—

See ante, "ANYTHING WHICH THE LANDLORD IS, UNDER THIS ACT, REQUIRED OR AUTHORISED TO DO"

——"award", in Act I of 1894—

EZRA *v.* SECRETARY OF STATE (1902) [I. L. R., 30 Calc., 36; s.c., 7 C. W. N., 249

——"become useless and inoperative", in Act V of 1881, s. 50 (4)—

BAL GANGADHAR TILAK *v.* SAKWARBAI (1902) . I. L. R., 26 Bom., 792

——benefit—

See post, "FOR THE BENEFIT OF THE INMATES OF THE HOSPITAL."

——"bhog"—

RAM KRISHNA MAHAPATRA *v.* MOHUNT PADMA CHARAN DEB GOSWAMI (1902) [6 C. W. N., 663

——"bind down"—

SUKRU DOSADH *v.* RAM PERGASH SINGH (1902) . . L. R., 30 Calc., 443; [s.c., 7 C. W. N., 174

——"bound by law to pay", in Act IX of 1872, s. 69—

BEPIN BEHARI SARNOKAR *v.* KALIDAS CHATTERJEE (1901) [6 C. W. N., 336

——"breach of promise of marriage", in Act XV of 1882, s. 19 (*q*)—

MUHAMMAD ASHRUFF HUSSAIN SAHEB *v.* MUHAMMAD ALI (1901) [I. L. R., 24 Mad., 652

——breach of the peace—

See post, "OFFENCES INVOLVING A BREACH OF THE PEACE."

——"but of a lower class", in Manu, Ch. IX, verse 122—

JAGDISH BAHADUR *v.* SHEO PERTAB SINGH (1901) . 5 C. W. N., 602: [s.c., I. L. R., 23 All., 369; L. R., 28 I. A., 100

——"by a ship"—

THE "TELENA" (1901) [I. L. R., 29 Calc., 402; s.c., 6 C. W. N., 773

——"by way of wager", in Act IX of 1872, s. 30—

KONG YU LONE & Co *v.* LOWJEE NANJEE (1901) . I. L. R., 29 Calc., 461: [s.c., 5 C. W. N., 714; L. R., 28 I. A., 239

——carriers—

See post, "COMMON CARRIERS"

——case—

See ante, "AFFECTING THE DECISION OF THE CASE."

See post, "CRIMINAL CASE."

See post, "IN THE CASE."

————in Act V of 1898—

LOLIT MOHAN MOITRA *v.* SURJA KANT ACHARJEE (1901) [I. L. R., 28 Calc., 709; s.c., 5 C. W. N., 749

————in Act II of 1899, s. 57—

REFERENCE UNDER STAMP ACT, s. 57 (1901) I. L. R., 25 Mad., 751

——caste—

See post, "SHALL BE OF ANY OF THE LOWER CASTES," ETC.

——cause—

See ante, "ANY OTHER REASONABLE CAUSE."

See post, "COSTS IN THE CAUSE."

See post, "GOOD CAUSE."

See post, "OTHER REASONABLE CAUSE."

See post, "PREVENTED BY ANY SUFFICIENT CAUSE."

See post, "REASONABLE AND PROBABLE CAUSE."

See post, "SUFFICIENT CAUSE"

WORDS—*continued.*

——"cause of action"—

in Act XIV of 1882, s. 17—

BANKE BEHARI LAL *v.* POKHE RAM (1902) . . I. L. R., 25 All., 48

in Act XIV of 1882, s. 424—

SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* PERUMAL PILLAI (1900) [I. L. R., 24 Mad., 279

——certificate—

See post, "ORDER GRANTING A CERTIFICATE."

——charge—

See ante, "ANY PERSON HAVING ANY INTEREST IN OR CHARGE UPON THE PROPERTY."

See post, "FALSE CHARGE."

—— in Act XLV of 1860, s. 211—

RAYAN KUTTI *v.* EMPEROR (1903) [I. L. R., 26 Mad., 640

——chattels—

See post, "GOODS AND CHATTELS"

——claim—

See ante, "ACTIONABLE CLAIM."

——class—

See ante, "BUT OF A LOWER CLASS."

——"clearing", in Mad. Act IV of 1882, s. 21 (*a*)—

EMPEROR *v.* VENKANNA PRABHU (1902) [I. L. R., 26 Mad., 470

——"cocaine"—

EMPEROR *v.* JAMSETJI CAWASJI CAMA (1903) . I. L. R., 27 Bom., 551

——"comes", in Act II of 1899, s. 33 (*1*)—

KING-EMPEROR *v.* BALU KUPPAYYAN (1901) . I. L. R., 25 Mad., 525

——commit—

See post, "MAY COMMIT."

See post, "ORDER HIM TO BE COMMITTED FOR TRIAL."

See post, "SUFFICIENT GROUNDS FOR COMMITTING"

——"*common carriers*"—

EAST INDIAN RAILWAY COMPANY *v.* KALIDAS MUKERJI (1901) [I. L. R., 28 Calc., 401; s.c., 5 C. W. N., 449; L. R., 28 I. A., 144

WORDS—*continued.*

——community—

See post, "MEMBER OF THE VILLAGE COMMUNITY."

See post, "VILLAGE COMMUNITY."

——competent jurisdiction—

See post, "COURT OF COMPETENT JURISDICTION"

——"complaint"—

in Act V of 1898, s. 4 (*h*)—

LALJI GOPE *v.* GIRIDHARI CHAUDHURI (1900) 5 C. W. N., 108

in Act V of 1898, s. 199—

TARA PROSAD LAHA *v.* EMPEROR (F.B., 1903) [I. L. R., 30 Calc., 910

——"*continuing wrong*", in *Act XV of* 1877, s. 23—

RAJAH OF VENKATAGIRI *v.* ISAKAPALLI SUBBIAH (1902) [I. L. R., 26 Mad., 410

——contract—

See post, "IN THE ABSENCE OF A CONTRACT TO THE CONTRARY"

——"contract in writing, registered", in Act XV of 1877, Sch. II, Art. 116—

KOTAPPA *v.* VALLUR ZAMINDAR (1901) [I. L. R., 25 Mad., 50

SESHACHALA NAICKAR *v.* VARADA CHARIAR (1901) [I. L R., 25 Mad., 55

——contrary—

See post, "IN THE ABSENCE OF A CONTRACT TO THE CONTRARY."

——"convenient and fitting", in Mad. Act I of 1884, s. 392—

MUHAMMAD MOHIDIN SAIT *v.* MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS (1901) [I. L. R., 25 Mad., 118

——"*costs in the cause*"—

TEMPLETON *v.* LAURIE (1900) [I. L. R., 25 Bom., 230

——"Court"—

HARI PANDURANG *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1903) [I. L. R., 27 Bom., 424

See also post, "WHENEVER THE DIRECTION OF THE COURT, ETC."

WORDS—*continued.*

——"Court"—*concluded.*

in Act I of 1894—

EZRA *v.* SECRETARY OF STATE (1902) [I. L. R., 30 Calc., 36; s.c., 7 C. W. N., 249

——"Court of competent jurisdiction", in Act V of 1898, s. 537—

KING-EMPEROR *v* TIRUMAL REDDI (1901) [I. L. R., 24 Mad., 523

——"Court to which appeals ordinarily lie", in Act V of 1898, s. 195 (7)—

EROMA VARIAR *v.* EMPEROR (F.B., 1903) [I. L. R., 26 Mad., 656

SADHU LALL *v.* RAM CHURN PASI (1902) [I. L. R., 30 Calc., 394; s.c., 7 C. W. N., 114

——"creditor"—

ISHVAR TIMAPPA HEGDE *v.* DEVAR VENKAPPA SHANBOG (1902) [I. L. R., 27 Bom., 146

See also post, "JOINT-CREDITORS."
See also post, "MERE FORBEARANCE ON THE PART OF THE CREDITOR"

——"criminal case"—
in Act V of 1898—

ARUMUGA TEGUNDAN (1902) [I. L. R., 26 Mad., 188

IN RE PANDURANG GOVIND PUJARI (1900) [I. L. R., 25 Bom., 179

LOLIT MOHAN MOITRA *v.* SURJA KANT ACHARJEE (1901) [I. L. R., 28 Calc., 709; s.c., 5 C. W. N., 749

in Letters Patent, High Courts, 1865, cl. 29—

LOLIT MOHAN MOITRA *v* SURJA KANT ACHARJEE (1901) [I. L. R., 28 Calc., 709; s.c., 5 C. W. N, 749

——"criminal force", in Act V of 1898, s. 522—

SRIHARI SHOME *v.* LAL KHAN (1900) [5 C. W. N., 250

——"crops or other produce of land", in Act V of 1898, s. 145 (2)—

RAMZAN ALI *v* JANARDHAN SINGH (1902) [I. L. R., 30 Calc., 110; s.c., 6 C. W. N., 881

——cross-examination—

See post, "FOR THE PURPOSE OF CROSS-EXAMINATION."

——"current year", in Act XI of 1859, s. 5—

JAHNNOVI CHOWDHARANI *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1902) [7 C. W. N., 377

WORDS—*continued.*

——date—

See post, "THE DATE OF ISSUING A NOTICE."

——"date of payment"—

MANOO LAL *v.* DURGA PRASAD SINGH (1901) . . . . 5 C. W. N., 653

——"date of sale"—
in Act XIV of 1882, s. 310A—

CHOWDHRY KESRI SAHAY *v.* GIANI ROY (1902) . I. L. R., 29 Calc., 626; [s.c., 6 C. W. N., 776

in Act VIII of 1865, s. 169 (1) (c)—

MATANGINI CHAUDHURANI *v.* SREENATH DAS (1903) . . 7 C. W. N., 552

——daughter-in-law—

See post, "DEPENDENT DAUGHTER-IN-LAW."

——"debt", in Act VII of 1889, s. 4—

ARUMUGAM PILLAI *v.* VALURA KOUNDAN (1900) . I. L. R., 24 Mad., 22

——debtor—

See post, "RIGHT, TITLE AND INTEREST OF THE DEBTORS."

See post, "SAME JUDGMENT-DEBTOR."

——decision—

See ante, "AFFECTING THE DECISION OF THE CASE."

——decree—

See post, "EXECUTION OR SATISFACTION OF THE DECREE."

in Act XIV of 1882, s. 2—

LALNARAIN SINGH *v.* MAHOMED RAFIUDDIN (1900) [I. L. R., 28 Calc., 81

RADHA NATH SINGH *v.* CHANDI CHARAN SINGH (1903) [I. L. R., 30 Calc., 660; s.c., 7 C. W. N., 486

TEJ SINGH *v.* CHABELI RAM (1902) [I. L. R., 24 All., 343

VEERASWAMY *v.* MANAGER, PITTAPUR ESTATE (1902) [I. L. R., 26 Mad., 518

in Act XIV of 1882, s. 273—

VASUDEVA RAVI VARMAN *v.* NARAYANA PATTAR (1900) [I. L. R., 24 Mad., 341

WORDS—*continued.*

——"decree"—*concluded.*

in Act XIV of 1882, s. 594—

BOMBAY BURMA TRADING CORPORATION, LD. *v.* DORABJI CURSETJI SHROFF (1903) [I. L. R., 27 Bom., 415

in Agency Rules for Ganjam and Vizagapatam—

VIKRAMADEO MAHARAJULUM GARU *v.* NELADEVI PATTAMADHADEVI GARU (1902) . I. L. R., 26 Mad., 266

——decree-holder—

See post, "FOR PAYMENT TO THE DECREE-HOLDER"

in Act XIV of 1882, s. 311—

BEJOY SINGH DUDHURIA *v.* HUKUM CHAND (1902) [I. L. R., 29 Calc., 548

——defaulter—

See post, "MOVABLE AND IMMOVABLE PROPERTY OF A DEFAULTER."

——"dependent daughter-in-law"—

SIDDESSURY DASSEE *v.* JONARDAN SARKAR (1902) . I. L. R., 29 Calc., 557; s.c., 6 C. W. N., 530

——"dependent member"—

SIDDESSURY DASSEE *v.* JONARDAN SARKAR (1902) . I. L. R., 29 Calc., 557; *s. c.,* 6 C. W. N., 530

——description—

See post, "STAMP OF IMPROPER DESCRIPTION"

——determination—

See post, "JUDICIAL DETERMINATION"

——determined—

See post, "IN WHICH THE RENT PAYABLE BY THE TENANT HAS BEEN A MATTER IN ISSUE AND HAS BEEN DETERMINED"

——"devolution of any interest", in Act XIV of 1882, s. 372—

SOURINDRA MOHUN TAGORE *v.* SIROMONI DEBI (1900) [I. L. R., 28 Calc., 171; s.c., 5 C. W. N., 307

——diligence—

See post, "PROSECUTING WITH DUE DILIGENCE."

WORDS—*continued.*

——direction—

See post, "WHENEVER THE DIRECTION OF THE COURT," ETC.

——"discharge,"—

in Act V of 1898, s. 209—

KRISHNA REDDI *v.* SUBBAMMA (1900) [I. L. R., 24 Mad., 136

in Act V of 1898, s. 437—

IMAN MANDAL *v.* EMPRESS (1900) [6 C. W. N., 163

——"dishonestly", in Act XLV of 1860—

EMPEROR *v.* MAHABIR SINGH (1902) [I. L. R., 25 All., 31

KEDAR NATH CHATTERJEE *v.* KING-EMPEROR (1901) . 5 C. W. N., 897

SUBUDHI RANTHO *v.* BALARAMA PUDI (1902) . I. L. R., 26 Mad., 481

——dispute—

See ante, "ANY DISPUTE SHALL ARISE."

See post, "PARTIES CONCERNED IN SUCH DISPUTE."

See post, "SUBJECT OF DISPUTE"

See post, "THE SUBJECTS IN DISPUTE"

——"distant kindred"—

ABDUL SERANG *v.* PUTEE BIBI (1902) [I. L. R., 29 Calc., 738

——distinct matters—

See post, "INSTRUMENT COMPRISING OR RELATING TO SEVERAL DISTINCT MATTERS."

See post, "SEVERAL DISTINCT MATTERS."

——distrainer—

See post, "WITH THE DISTRAINER"

——"disturbance", in Act XLV of 1860, s. 296—

VIJIARAGHAVA CHARIAR *v.* EMPEROR (F.B., 1903) . I. L. R., 26 Mad., 554

——document—

See post, "FALSE DOCUMENT."

——done—

See post, "SUCH THING TO BE DONE."

——drug—

See post, "INTOXICATING DRUG."

——due diligence—

See post, "PROSECUTING WITH DUE DILIGENCE."

WORDS—*continued.*

——duties—

See post, "IN THE EVENT . . . . OF HIS BEING INCAPACITATED . . . FOR THE PERFORMANCE OF HIS DUTIES," ETC.

See post, "RENDERING SUCH FORCE EFFICIENT IN THE DISCHARGE OF ALL ITS DUTIES."

——"dwell"—

FERNANDEZ *v.* WRAY (1900) [I. L. R., 25 Bom., 176

——efficient—

See post, "RENDERING SUCH FORCE EFFICIENT IN THE DISCHARGE OF ALL ITS DUTIES."

——"ek jaddi"—

CHATAR SINGH *v.* KALYAN SINGH (1900) [I. L. R., 23 All., 32

——"eldest son to be born"—

HARRISS *v.* BROWN (1901) [I. L. R., 28 Calc., 621: s.c., 5 C. W. N., 729; L. R., 28 I. A., 159

——embankment—

See post, "SHALL ADD TO ANY EXISTING EMBANKMENT"

in Bengal Act II of 1882, s. 3—

BISSUMBHUR SINGH *v.* QUEEN-EMPRESS (1900) . . 5 C. W. N., 108

——end—

See post, "FOR THAT END."

——engaged—

See post, "LAWFULLY ENGAGED."

——"English mortgage", in Act IV of 1882, s. 58 (*e*)—

NARAYANA AYYAR *v.* VENKATARAMANA AYYAR (F.B., 1902) [I. L. R., 25 Mad., 220

——"enhance the sentence", in Act V of 1898, s. 423 (*b*)—

VEMURI SESHANNA (1902) [I. L. R., 26 Mad., 421

——"enticing away", in Act XLV of 1860, s. 498—

IN RE BALAMBAL (1902) [I. L. R., 26 Mad., 463

——"entire estates", in Madras Regulation XXVI of 1802, s. 3—

NARAYANA RAJA *v.* RAMACHANDRA RAJA (1902) . I. L. R., 26 Mad., 521

WORDS—*continued.*

——entitled—

See post, "PERSON ENTITLED TO INSTITUTE A SUIT OR MAKE AN APPLICATION."

——equitable—

See post, "FAIR AND EQUITABLE."

——estate—

See ante, "ENTIRE ESTATES."
See post, "INTEREST IN THE ESTATE OF THE DECEASED."

——evade—

See ante, "ASSISTING A PERSON IN ANY WAY TO EVADE APPREHENSION."

——execution—

See post, "STAMPED AT THE TIME OF EXECUTION."

in Act XIV of 1882, s. 545—

BRIJ COOMAREE *v.* RAMRICK DASS (1901) [5 C. W. N., 781

——"execution or satisfaction of the decree", in Act XIV of 1882, s. 244—

KASINATHA AYYAR *v.* UTHUMANSA ROWTHAN (1901) . I. L. R., 25 Mad., 529

——"exercised a jurisdiction not vested in it by law," in Act XIV of 1882, s. 622—

KEDAR NATH SEN *v.* UMA CHARAN (1900) . . . 6 C. W. N., 57

——failure of justice—

See post, "OCCASIONED A FAILURE OF JUSTICE"

——"fair and equitable", in Act VIII of 1885—

HEM CHANDRA CHOWDHRY *v.* KALI PROSANNA BHADURI (1903) [I. L. R., 30 Calc., 1033; s.c., L. R., 30 I. A., 177

——"false charge", in Act XLV of 1860, s. 211—

RAYAN KUTTI *v.* EMPEROR (1903) [I. L. R., 26 Mad., 640

——"false document," in Act XLV of 1860, s. 464—

KEDAR NATH CHATTERJEE *v.* KING-EMPEROR (1901) . 5 C. W. N., 897

——"final"—

MANTANGINI DEBI *v.* GIRISH CHUNDER CHONGDAR (1903) [I. L. R., 30 Calc., 619; s.c., 7 C. W. N., 433

WORDS—*continued.*

——finding—

See post, "REVERSE THE FINDING AND SENTENCE."

——fitting—

See ante, "CONVENIENT AND FITTING."

——for ever—

See ante, "ALWAYS AND FOR EVER"

——"for payment to the decree-holder," in Act XIV of 1882, s. 310 A (*b*)—

ROSHUN LALL *v.* RAM LALL MULLICK (1903) . I. L. R., 30 Calc., 262; s.c., 7 C. W. N., 341

——"for that end", in Act XLV of 1860, s. 390—

OTARUDDI MANJHI *v.* KAFILUDDI MANJHI (1900) . 5 C. W. N., 372

——"for the benefit of the inmates of the hospital"—

FANINDRA KUMAR MITTER *v.* ADMINISTRATOR-GENERAL OF BENGAL (1901) [6 C. W. N., 321

——"for the purpose of cross-examination", in Act V of 1898, s. 257—

SHEOPRAKASH SINGH *v.* RAWLINS (1901) [I. L. R., 28 Calc., 594

——forbearance—

See post, "MERE FORBEARANCE."

——force—

See ante, "CRIMINAL FORCE."

——"foreigner"—

KASSIM MAMOOJEE *v.* ISUF MAHOMED SULLIMAN (1902) [I. L. R., 29 Calc., 509; s.c., 6 C. W. N., 829

——"found therein", in Bom. Act IV of 1887, s. 8—

EMPEROR *v.* WALLI MUSSAJI (1902) [I. L. R., 26 Bom., 641

——"fraud, surprise or mistake, or such other special ground"—

ROYAL INSURANCE COMPANY *v.* AUKHOY COOMAR DUTT (1901) [I. L. R., 28 Calc., 272; s.c., 5 C. W. N., 337

——"fraudulently", in Act XLV of 1860—

EMPEROR *v.* MAHABIR SINGH (1902) [I. L. R., 25 All., 31

KEDAR NATH CHATTERJEE *v.* KING-EMPEROR (1901) . 5 C. W. N., 897

——"frivolous", in Act V of 1898, s. 250—

BENI MADHUB KURMI *v.* KUMUD KUMAR BISWAS (1902) [I. L. R., 30 Calc., 123; s.c., 6 C. W. N., 799

——gaming—

See post, "INSTRUMENTS OF GAMING."

——"goes armed", in Act XI of 1878, s. 19—

EMPEROR *v.* HARPAL RAI (1902) [I. L. R., 24 All., 454

——"good cause"—

KARUPPANA SERVAGARAN *v.* SINNA GOUNDEN (1902) [I. L. R., 26 Mad., 480

——"goods and chattels", in 11 & 12 Vict., c. 21, s. 23—

PUNINTHAVELU MUDALIAR *v.* BASHYAM AYYANGAR (1901) [I. L. R., 25 Mad., 406

——ground—

See ante, "FRAUD, SURPRISE OR MISTAKE OR SUCH OTHER SPECIAL GROUND."

See post, "SOME SPECIAL GROUND."

See post, "SUFFICIENT GROUNDS FOR COMMITTING."

——guarantee—

See post, "SUM HE HAS RIGHTLY PAID UNDER THE GUARANTEE."

——guardian—

See post, "LAWFUL GUARDIAN"

——"harbour," in Act XLV of 1860, 216 B—

EMPEROR *v.* HUSAIN BAKSH (1903) [I. L. R., 25 All., 261

——"having only an imperfect title", in *Act I of 1877, s. 16*—

SARJU PRASAD SINGH *v.* WAZIR ALI (1900) [I. L. R., 23 All., 119

——"hereby", in Act V of 1881, s. 86—

UMA CHARAN DAS *v.* MUKTAKISHI DASI (1900) . I. L. R., 28 Calc., 149; s.c., 5 C. W. N., 443

——"High Court", in Act V of 1881, s. 87—

IN THE GOODS OF MOHENDRA NARAIN ROY (1900) . . 5 C. W. N., 377

——"Hindu"—

BHAGWAN KAUR *v.* BOSE (1903) [7 C. W. N., 895; s.c., L. R., 30 I. A., 249

WORDS—*continued.*

——"hissadaran shikmi," in wajib-ul-arz—

ABDUL SHAKUR *v.* MENDAI (1901)
[I. L. R., 23 All., 260

——"honoured"—

NATIONAL BANK OF INDIA *v.* SALEH MAHAMED BALAXA (1901)
[I. L. R., 25 Bom., 706

——hospital—

See ante, "FOR THE BENEFIT OF THE INMATES OF THE HOSPITAL."

——house—

See post, "MATERIALLY ALTER THE STRUCTURE OF ANY HOUSE."

——"houses," in Act VII of 1870—

DURGA SINGH *v.* BISHESHAR DAYAL (1898)
[I. L. R., 24 All., 218

——"if a suit be adjusted", in Act XIV of 1882, s. 375—

FAKIR CHAND DEY *v.* TINCOWRI DEY (1902)
[7 C. W. N., 180

——immovable property—

See ante, "ANY PERSON WHOSE IMMOVABLE PROPERTY HAS BEEN SOLD."

See post, "MOVABLE AND IMMOVABLE PROPERTY OF A DEFAULTER."

See post, "PERSON WHOSE IMMOVABLE PROPERTY HAS BEEN SOLD."

See post, "SUITS FOR LAND OR OTHER IMMOVABLE PROPERTY"

in Act I of 1877, s. 9—

FUZLUR RAHMAN *v.* KRISHNA PRASAD (1902) . I. L. R., 29 Calc., 614

——imperfect title—

See ante, "HAVING ONLY AN IMPERFECT TITLE."

——imposition—

See ante, "ALL IMPOSITIONS UPON TENANTS UNDER THE DENOMINATION OF ABWAB."

——"imprisonment"—

MAHAMMAD YUSUFUDDIN *v.* SECRETARY OF STATE FOR INDIA (1903)
[I. L. R., 30 Calc., 872 :
s.c., 7 C. W. N., 729 ;
L. R., 30 I. A., 154

——improper description—

See post, "STAMP OF IMPROPER DESCRIPTION."

WORDS—*continued.*

——"in accordance with law", in Act XV of 1877, Sch. II, Art. 179—

MURARI LAL *v.* UMRAO SINGH (1901)
[I. L. R., 23 All., 499

SUBRAMANIA CHETTIAR *v.* RAMACHANDRA AYYAR (1902)
[I. L. R., 26 Mad., 197

——"in issue," in Act VI of 1899, s. 4—

SANKARANARAYANA VADHYAR *v.* SANKARANARAYANA AYYAR (1901)
[I. L. R., 25 Mad., 343

——"in the absence of a contract to the contrary", in Act IV of 1882, s. 82—

RAMABHADRACHAR *v.* SRINIVASA AYYANGAR (1900)
[I. L. R., 24 Mad., 85

——"in the case", in Act V of 1898, s. 337 (2)—

KING-EMPEROR *v.* BALA (1901)
[I. L. R., 25 Bom., 675

QUEEN-EMPRESS *v.* RAMASAMI (1900)
[I. L. R., 24 Mad., 321

——"in the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held", in Act XII of 1887, s. 11 (1)—

GAPPU LAL *v.* MATHURA DAS (1902)
[I. L. R., 25 All., 183

——"in which the rent payable by the tenant has been a matter in issue and has been determined," in Act XII of 1881, s. 189—

BENI PRASAD KUARI *v.* BATULAN BIBI (1901) . . I. L. R., 23 All., 283

——incapacitated—

See ante, "IN THE EVENT . . . . . INCAPACITATED," ETC.

——"include", in Act XLV of 1860, s. 361, Expln.—

JAGANNADHA RAO *v.* KAMARAJU (1900)
[I. L. R., 24 Mad., 284

——"information given to a Magistrate," in Act V of 1898, s. 250—

KING-EMPEROR *v.* THAMMANA REDDI (1901) . . I. L. R., 25 Mad., 667

WORDS—*continued.*

——"injury"—

in Act XLV of 1860, s. 44—

JOWAHIR PATTAK *v.* PARBHOO AHIR (1902)
[I. L. R., 30 Calc., 418 ; s.c., 7 C. W. N., 116

in Act XIV of 1882, s. 311—

SHOSI BHUSAN SADHU *v.* AHMED HOSSEIN (1903) . . . 7 C. W. N., 439

——inmates—

See ante, "FOR THE BENEFIT OF THE INMATES OF THE HOSPITAL."

——inoperative—

See ante, "BECOME USELESS AND INOPERATIVE."

——"inquiry", in Act I of 1894—

EZRA *v* SECRETARY OF STATE (1902)
[I. L. R., 30 Calc., 36 ; s.c., 7 C. W. N., 249

——"instrument comprising or relating to several distinct matters", in Act I of 1879, s. 7—

REFERENCE UNDER STAMP ACT, s. 61 (*1*) (1902)
[I. L. R., 26 Mad., 473

——"instrument of mischief"—

THE TELENA (1901)
[I. L. R., 29 Calc., 402; s.c., 6 C. W. N., 773

——"instruments of gaming", in Ben. Act II of 1867, s. 1—

AMRIT SINGH *v.* KING-EMPEROR (1901)
[5 C. W. N., 503

——insurance—

See post, "POLICY OF SEA INSURANCE"

——"intangible thing", in Act IV of 1882, s. 54—

RAMASAMI PATTAR *v.* CHINNAN ASARI (1901) . . I. L. R., 24 Mad., 449

——interest—

See ante, "ANY PERSON HAVING ANY INTEREST IN, OR CHARGE UPON, THE PROPERTY."

See ante, "DEVOLUTION OF ANY INTEREST."

See post, "PROTECTED INTEREST."

See post, "RIGHT, TITLE AND INTEREST OF THE DEBTORS"

See post, "SOME INTEREST IN."

——"interest in the estate of the deceased," in Act V of 1881, s. 69—

KISHEN DAI *v* SATYENDRA NATH DUTT (1901) . . I. L. R., 28 Calc., 441

——interested—

See post, "PERSON INTERESTED."

——interruption—

See post, "WITHOUT INTERRUPTION."

——"intoxicating drug", in Bom. Act V of 1878, s. 3 (9)—

EMPEROR *v.* JAMSETJI CAWASJI CAMA (1903) . . I. L. R., 27 Bom., 551

——"involve some substantial question of law", in Act XIV of 1882, s. 596—

BANKE LAL *v.* JAGAT NARAIN (1900)
[I. L. R., 23 All., 94

——"irregularity", in Act V of 1898, s. 537—

RAMAKRISHNA REDDI *v.* EMPEROR (1903)
[I. L. R., 26 Mad., 598

——issue—

See ante, "IN ISSUE."

See ante, "IN WHICH THE RENT PAYABLE BY THE TENANT HAS BEEN A MATTER IN ISSUE."

——"istemrari mokurrari"—

See post, "MOKURRARI ISTEMRARI."

——"joint-creditors," in Act XV of 1887, s. 8—

PERIASAMI *v.* KRISHNA AYYAN (F.B., 1902)
[I. L. R., 25 Mad., 431

——"judgment"—

in Act XIV of 1882, s. 206—

RAMESHWAR PROSAD NARAIN SINGH *v.* CHANDRESHWAR PROSAD NARAIN SINGH (1903) . 7 C. W. N., 880

in Letters Patent, High Courts, 1865, cl. 15—

APPASAMI PILLAI *v.* SOMASUNDRA MUDALIAR (1902)
[I. L. R., 26 Mad., 437

BRIJ COOMAREE *v.* RAMRICK DASS (1901) . . 5 C. W. N., 781

COMMERCIAL BANK OF INDIA *v.* SABJU SAHEB (1900)
[I. L. R., 24 Mad., 252

DURGA PRASADA NAYADU *v.* MALLIKARJUNA PRASADA NAYADU (1901)
[I. L. R., 24 Mad., 358

IN RE HORACE LYALL (F.B., 1901-2)
[I. L. R., 29 Calc., 286 ; s.c., 6 C. W. N., 254

WORDS—*continued.*

——"judgment"—*concluded.*

in Letters Patent, High Courts, 1865, cl. 15—*concluded.*

KUPPUSAMI CHETTI *v.* RATHNAVELU CHETTI (1901) [I. L. R., 24 Mad., 511

NARAYANASAMI REDDI *v.* OSURU REDDI (1901) . . I. L. R., 25 Mad., 548

PUNINTHAVELU MUDALIAR *v.* BHASHYAM AYYANGAR (1901) [I. L. R., 25 Mad., 406

SABHAPATHI CHETTI *v.* NARAYANASAMI CHETTI (1901) [I. L. R., 25 Mad., 555

SESHAGIRI ROW *v.* ASKUR JUNG AFTAB DOWLA (1902) [I. L. R., 26 Mad., 502

VYASACHARY *v.* KESHAVACHARYA (1901) [I. L. R., 25 Mad., 654

in Mad. Act VIII of 1885, s. 69—

VENKATA PAPAYYA RAO *v.* VENKATA SUBBAYYA (1901) [I. L. R., 25 Mad., 453

——judgment-debtor—

See post, "SAME JUDGMENT-DEBTOR."

——"judicial determination"—

SAHIRAM AGARWALLA *v.* JIBUN KAMAR (1900) . . . 5 C. W. N., 254

——"judicial proceeding", in Act V of 1898, s. 476—

SANGILIA PILLAI *v.* DISTRICT MAGISTRATE OF TRICHINOPOLY (1901) [I. L. R., 25 Mad., 659

——jurisdiction—

See ante, "COURT OF COMPETENT JURISDICTION."

See ante, "EXERCISED A JURISDICTION NOT VESTED IN IT BY LAW."

in Act XIV of 1882, s. 578—

MOHESH CHANDRA DAS *v.* JAMIRUDDIN MOLLAH (1901) [I. L. R., 28 Calc., 324; s.c., 5 C. W. N., 509

——jury—

See post, "WHERE THE TRIAL WAS BY JURY."

——justice—

See post, "OCCASIONED A FAILURE OF JUSTICE."

——"kaimi"—

FAZEL SHEIKH *v.* KERAMUDDI SHEIKH (1902) . . 6 C. W. N., 916

WORDS—*continued.*

——kindred—

See ante, "DISTANT KINDRED."

——land—

See ante, "CROPS OR OTHER PRODUCE OF LAND."

See post, "SUITS FOR LAND OR OTHER IMMOVABLE PROPERTY."

in Act X of 1859, s. 23 (4)—

ROOKE *v.* BENGAL COAL COMPANY, LTD. (1901) [I. L. R., 28 Calc., 485; s.c., 5 C. W. N., 840

in Act VII of 1870—

DURGA SINGH *v.* BISHESHAR DAYAL (1898) . . I. L. R., 24 All., 218

in Ben. Act IX of 1879, s. 10—

MUKUND KOERI *v.* DEPUTY COMMISSIONER OF CHOTA NAGPUR (1902) [I. L. R., 29 Calc., 638; s.c., 7 C. W. N., 20

——landlord—

See ante, "ANYTHING WHICH THE LANDLORD IS, UNDER THIS ACT, REQUIRED OR AUTHORISED TO DO."

——law—

See ante, "BOUND BY LAW TO PAY."

See ante, "EXERCISED A JURISDICTION NOT VESTED IN IT BY LAW."

See ante, "IN ACCORDANCE WITH LAW."

See ante, "INVOLVE SOME SUBSTANTIAL QUESTION OF LAW."

——lawful—

See ante, "AND IT SHALL BE ALSO LAWFUL."

——"lawful guardian", in Act XLV of 1860, s. 361, Expln.—

JAGANNADHA RAO *v.* KAMARAJU (1900) [I. L. R., 24 Mad., 284

——"lawfully engaged", in Act XLV of 1860, s. 296—

VIJIARAGHAVA CHARIAR *v.* EMPEROR (F.B., 1903) I. L. R., 26 Mad., 554

——lease—

See post, "MULGENI LEASE."

See post, "THE SUB-LEASE SHALL NOT BE VALID."

——like—

See post, "OPEN SQUARE OR THE LIKE."
See post, "OR THE LIKE."

WORDS—*continued*

——lower class—

See ante, "BUT OF A LOWER CLASS."

——Magistrate—

See ante, "INFORMATION GIVEN TO A MAGISTRATE."

——"malice"—

BHIM SEN *v.* SITA RAM (1902) [I. L. R., 24 All., 363

——mark—

See post, "TRADE-MARK."

——marriage—

See ante, "BREACH OF PROMISE OF MARRIAGE."

——"materials", in Mad. Act I of 1886, s. 55 (*g*)—

QUEEN-EMPRESS *v.* GANGAYYA (1901) [I. L. R., 24 Mad., 417

——"materially alter the structure of any house", in Ben. Act II of 1888, s. 236—

KESHUB CHANDRA SEN *v.* CALCUTTA MUNICIPAL CORPORATION (1902) [7 C. W. N., 374

——"may commit", in Act V of 1898, s. 477—

REILY *v.* KING-EMPEROR (1901) [I. L. R., 28 Calc., 434; s.c., 5 C. W. N., 609

——means of subsistence—

See post, "OSTENSIBLE MEANS OF SUBSISTENCE."

——"medicated article", in Bom. Act V of 1878, s. 62—

EMPEROR *v.* JAMSETJI COWASJI CAMA (1903) . . I. L. R., 27 Bom., 551

——member—

See ante, "DEPENDENT MEMBER."

——"member of the village community" in Act XVIII of 1876, s. 9, cl. 3rd—

DRIG BIJAI SINGH *v.* DEPUTY COMMISSIONER OF GONDA (F.B., 1902) [I. L. R., 24 All., 420

——"mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him", in Act IX of 1872, s. 137—

RANJIT SINGH *v.* NAUBAT (1902) [I. L. R., 24 All., 504

——"mesne profits"—

NARPAT SINGH *v.* HAR GAYAN (1903) [I. L. R., 25 All., 275

WORDS—*continued.*

——mischief—

See ante, "INSTRUMENT OF MISCHIEF."

——"misconduct", in Act XIV of 1882, s. 521—

KALI CHARAN SIRDAR *v.* SARAT CHUNDER CHOWDHRY (1903) [I. L. R., 30 Calc., 397; s.c., 7 C. W. N., 545

——mistake—

See ante, "FRAUD, SURPRISE OR MISTAKE."

——"mokurrari istemrari"—

AGIN BINDH UPADHYA *v.* MOHAN BIKRAM SHAH (1902) [I. L. R., 30 Calc., 20; s.c., 7 C. W. N., 314

NARSINGH DYAL SAHU *v.* RAM NARAIN SINGH (1903) [I. L. R., 30 Calc., 883

——mortgage—

See ante, "ENGLISH MORTGAGE."

See post, "SPECIFICALLY MORTGAGED."

——"movable and immovable property of a defaulter", in Mad. Act II of 1864, s. 5—

NARAYANA RAJA *v.* RAMACHANDRA RAJA (1902) . I. L. R., 26 Mad., 521

——"movable property"—

in Act XV of 1877, Sch. II, Art. 89—

ASGHAR ALI KHAN *v.* KHURSHED ALI KHAN (1901) I. L. R., 24 All., 27; s.c., L. R., 28 I. A., 227

in Act XIV of 1882, s. 268—

TARVADI BHOLANATH HARISHANKER *v.* BAI KASHI (1901) I. L. R., 26 Bom., 305

——"*mulgeni* lease"—

NARAYAN MANJAYA *v.* RAMCHANDRA DEVASTHAN (1903) [I. L. R., 27 Bom., 373

——"*nadarad*"—

ALI NASIR KHAN *v.* MANIK CHAND (F.B., 1902) . I. L. R., 25 All., 90

——"no power to alienate", in Act I of 1894, s. 32—

MAHAMMAD ALI RAJA AVERGAL *v.* AHAMMED ALI RAJA AVERGAL (F.B., 1902) [I. L. R., 26 Mad., 287

——notice—

See post, "THE DATE OF ISSUING A NOTICE."

WORDS—*continued.*

—"*o putra pautradi*"—

GOOROO DAS MUSTAFI *v.* SARAT CHUNDER MUSTAFI (1902) [I. L. R., 29 Calc., 699; s.c., 6 C. W. N., 721

—"occasioned a failure of justice", in Act V of 1898, s. 537—

KING-EMPEROR *v.* TIRUMAL REDDI (1901) . I. L. R., 24 Mad., 523

—occasions—

See ante, "AND IT SHALL BE ALSO LAWFUL FOR THE COURT, ON THOSE OR ANY OTHER OCCASIONS"

—"occupants"—

CHOUDHRI MAKBUL HUSAIN *v.* LALTA PERSHAD (1901) [L. R., 28 I. A., 169; s.c., I. L. R., 24 All., 1

—offence—

See ante, "ANY SUCH OFFENCE."

in Act V of 1898, s. 4 (*o*)—

ADAMS *v.* EMPEROR (1903) [I. L. R., 26 Mad., 607

—"offences", in Act XXV of 1879, s. 6—

ADAMS *v.* EMPEROR (1903) [I. L. R., 26 Mad., 607

—"offences involving a breach of the peace", in Act V of 1898, s. 110 (*e*)—

ARUN SAMANTA *v.* EMPEROR (1902) [I. L. R., 30 Calc., 366

—offer for sale—

See post, "SELLS OR OFFERS FOR SALE."

—"officer in charge of a police-station" in Act V of 1898, s. 4 (*1*) (*p*)—

SOLICITOR TO THE GOVERNMENT OF INDIA *v.* MADHO DHOBI (1903) [7 C. W. N., 661

—"omission", in Act V of 1898, s. 537—

RAMAKRISHNA REDDI *v.* EMPEROR (1903) [I. L. R., 26 Mad., 598

—only—

See ante, "HAVING ONLY AN IMPERFECT TITLE."

—"open square or the like", in Ben. Act III of 1899, Sch. XVII, rule 24—

NOVI LAL SETT *v.* CORPORATION OF CALCUTTA (1903) . 7 C. W. N., 853

—option—

See post, "SHIPMENT AT SELLER'S OPTION."

WORDS—*continued.*

—"or the like", in Act X of 1859, s. 23 (*4*)—

ROOKE *v.* BENGAL COAL COMPANY, LTD. (1901) . I. L. R., 28 Calc., 485; s.c., 5 C. W. N., 480

—order—

See post, "PARTY AGAINST WHOM AN ORDER IS PASSED."

in Act X of 1897, s. 24—

PADAN SAHA *v.* EMPEROR (1903) [7 C. W. N., 658

—"order granting a certificate," in Act VII of 1889, s. 19—

VENKATESWARLU *v.* BRAHMARAYUDU RAJA KRISTNAJI (1901) [I. L. R., 25 Mad., 634

—"order him to be committed for trial," in Act V of 1898, s. 436—

QUEEN-EMPRESS *v.* SURENDRA NATH SARKAR (1901) [5 C. W. N., 574; s.c., I. L. R., 28 Calc., 397

—"order made on appeal"—

SUNDER KOER *v.* CHANDISHWAR PROSAD SINGH (1903) [I. L. R., 30 Calc., 679

—ordinarily—

See ante, "COURT TO WHICH APPEALS ORDINARILY LIE."

—"ostensible means of subsistence", in Act V of 1898, s. 109 (*b*)—

QUEEN-EMPRESS *v.* POORAN AGARWALLA (1900) . . . 5 C. W. N., 28

—other—

See ante, "CROPS OR OTHER PRODUCE OF LAND."

See ante, "FRAUD, SURPRISE IN MISTAKE OR SUCH OTHER SPECIAL GROUND."

—"other reasonable cause"—

See ante, "ANY OTHER REASONABLE CAUSE."

in Act XVIII of 1879, s. 13 (*f*)—

IN THE MATTER OF A PLEADER (1902) [I. L. R., 26 Mad., 448

—"otherwise", in Act XIV of 1882, s. 600—

BANARASI PERSHAD *v.* KASHI KRISHEN NARAIN (1900) [5 C. W. N., 193; s.c., L. R., 28 I. A., 11; I. L. R., 23 All., 227

WORDS—*continued*

—owner—

See post, "THE PURCHASER SHALL NOT ACQUIRE ..... OWNERS"

in Ben. Act III of 1899, s. 3 (*32*)—

FINK *v.* CORPORATION OF CALCUTTA (1903) . I. L. R., 30 Calc., 721; s.c. 7 C. W. N., 706

—paid—

See post, "SUM HE HAS RIGHTLY PAID UNDER THE GUARANTEE"

See post, "THE AREA FOR WHICH RENT HAS BEEN PREVIOUSLY PAID."

in Act XV of 1877, Sch. II, Arts. 61, 99—

RAJAH OF VIZIANAGRAM *v.* SETRUCHERLA SOMASEKHARAZ (F B, 1903) [I. L. R., 26 Mad., 686

—"*parjyapta haibek*"—

HARRISS *v* BROWN (1901) [I. L. R., 28 Calc., 621; s.c., 5 C. W. N., 729; L. R., 28 I. A., 159

—"parties concerned in such dispute", in Act V of 1898, s. 145 (*1*)—

KRISHNA KAMINI *v* ABDUL JUBBAR (F B., 1902) I. L. R., 30 Calc., 155; s.c., 6 C. W. N., 737

—"parties to the suit", in Act XIV of 1882, s. 244 (*c*)—

KAHIMUDDIN SARKAR *v* LALL MEAH (1902) . 6 C. W. N., 727; s.c., I. L. R., 29 Calc., 696

—party—

See ante, "ALL PROCEEDINGS UNDER THIS ACT BETWEEN PARTY AND PARTY."

See ante, "ALL THE PARTIES TO A SUIT"

—"party against whom an order is passed", in Act XIV of 1882, s. 283—

MOIDIN KUTTI *v* KUNHI KUTTI ALI (1902) . . I. L. R., 25 Mad., 721

—pay—

See ante, "BOUND BY LAW TO PAY."

—payment—

See ante, "DATE OF PAYMENT."

See ante, "FOR PAYMENT TO THE DECREE-HOLDER."

—peace—

See ante, "OFFENCES INVOLVING A BREACH OF THE PEACE."

WORDS—*continued*.

—pension—

See post, "POLITICAL PENSIONS."

—"*person aggrieved*", in *Act V of 1898*, s. 198—

BEAUCHAMP *v.* MOORE (1902) [I. L. R., 26 Mad., 43

EMPEROR *v.* IMTIAZAN (1902) [I. L. R., 25 All., 132

—"person entitled to institute a suit or make an application", in Act XV of 1877, s. 7—

PERIASAMI *v.* KRISHNA AYYAN (F B, 1902) [I. L. R., 25 Mad., 431

—"person interested", in Act I of 1894, s. 23—

NARAIN CHANDRA BORAL *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1900) . . I. L. R., 28 Calc., 152; s.c., 5 C. W. N., 349

—"person whose immovable property has been sold", in Act XIV of 1882, s. 310A—

MALLIKARJUNADU SETTI *v* LINGA MURTI PANTULU (1902) [I. L. R., 26 Mad., 332

PARESH NATH SINGHA *v.* NOBOGOPAL CHATTOPADHYA (F.B., 1901) [I. L. R., 29 Calc., 1; s.c., 5 C. W. N., 821

—"physical possession," in Act XV of 1877, Sch. II, Art. 10—

BATUL BEGAM *v* MANSUR ALI KHAN (1901) . . I. L. R., 24 All., 17; s.c., L. R., 28 I. A., 248; 5 C. W. N., 888

—"place to which the public have access"—

CAWASJI MERWANJI SHROFF *v* GREAT INDIAN PENINSULA RAILWAY COMPANY (1902) . I. L. R., 26 Bom., 609

—police-force—

See post, "RENDERING SUCH FORCE EFFICIENT IN THE DISCHARGE OF ALL ITS DUTIES"

—police-station—

See ante, "OFFICER IN CHARGE OF A POLICE-STATION"

—"policy of sea-insurance", in Act II of 1899, Sch. I, Art. 47, cl. A—

IN THE MATTER OF A REFERENCE UNDER THE INDIAN STAMP ACT, 1899 (1903) [I. L. R., 30 Calc., 565

WORDS—*continued.*

——"political pensions", in Act XIV of 1882, s. 266 (*g*)—

MUTHUSAMI NAIDU *v.* ALAGIA MANAVALA SIMMALA RAJA (1902) [I. L. R., 26 Mad., 423

——possession—

See ante, "ACTUAL POSSESSION."

See ante, "PHYSICAL POSSESSION."

in Act XV of 1877, s. 28—

LALLA KANHOO LAL *v.* MANKI BIBI (1902) . . . 6 C. W. N., 601

in Act XIV of 1882, s. 331—

MANCHARAM *v.* FAKIRCHAND (1901) [I. L. R., 25 Bom., 478

——power—

See ante, "NO POWER TO ALIENATE."

——prejudice——

See post, "TO THE PREJUDICE OF THE PURCHASER."

——"prevented by any sufficient cause", in Act XIV of 1882, ss. 103, 108, 558—

SOMAYYA *v.* SUBBAMMA (1903) [I. L. R., 26 Mad., 599

——"prior to the realisation", in Act XIV of 1882, s. 295—

RAMANATHAN CHETTIAR *v.* SUBRAMANIA SASTRIAL (1902) [I. L. R., 26 Mad., 179

——probable cause—

See post, "REASONABLE AND PROBABLE CAUSE."

——proceeding—

See ante, "JUDICIAL PROCEEDING."

in Act XV of 1877, s. 14—

JAFAR *v.* KAMALINI DEBI (1900) [5 C. W. N., 150; s.c., 28 Calc., 438

——proceedings—

See ante, "ALL PROCEEDINGS UNDER THIS ACT BETWEEN PARTY AND PARTY."

in Madras Act VIII of 1865, s. 80—

DHARMAKARTA OF TINNANORE TEMPLE *v.* LUCHIMI DOSS (F B, 1903) [I. L. R., 26 Mad., 589

——produce—

See ante, "CROPS OR OTHER PRODUDCE OF LAND."

——profits—

See ante, "MESNE PROFITS."

——promise—

See ante, "BREACH OF PROMISE OF MARRIAGE"

——property—

See ante, "IMMOVABLE PROPERTY."

See ante, "MOVABLE AND IMMOVABLE PROPERTY."

See ante, "MOVABLE PROPERTY."

See post, "SALEABLE PROPERTY."

in Act VII of 1870, Sch. I, Art. 11—

IN RE LAKSHMINARAYANA AMMAL (1902) . . I. L. R., 25 Mad., 515

——"proprietor", in Act V of 1888, s. 51—

BAHAL RAI *v.* SUMER CHAND (1903) [I. L. R., 25 All., 493

——"prosecuting with due diligence", in Act XV of 1877, s. 14—

DASRATH RAI *v.* BHIRGU RAI CHANDAN (1901) . . I. L. R., 23 All., 434

——"prosecutions", in Ben. Act IV of 1866, s. 49 (1)—

BIJOYENDRA LAL MITTER *v.* EMPEROR (1903) . . . 7 C. W. N., 883

——"protected interest", in Act VIII of 1885, s. 160—

AKHOY KUMAR SOOR *v.* BEJOY CHAND MOHATAP (1902) [I. L. R., 29 Calc., 813

——public—

See ante, "PLACE TO WHICH THE PUBLIC HAVE ACCESS."

——"public purpose", in Act I of 1894—

EZRA *v.* SECRETARY OF STATE (1902) [I. L. R., 30 Calc., 36; s.c., 7 C. W. N., 249

——"public servant," in Act XLV of 1860, s. 21—

NAZAMUDDIN *v.* QUEEN-EMPRESS (1900) [I. L. R., 28 Calc., 344

——"public street"—

ANKLESVAR MUNICIPALITY *v.* RIKHAVCHAND KAPURCHAND (1900) [I. L. R., 25 Bom., 315

——"publication"—

BAHAL RAI *v.* SUMER CHAND (1903) [I. L. R., 25 All., 493

——punishment—

See post, "SHALL BE OF ANY OF THE LOWER CASTES OF THE PEOPLE ON WHOM IT MAY NOT BE IMPROPER TO INFLICT SO DEGRADING A PUNISHMENT."

WORDS—*continued.*

—"purchased", in Act XV of 1877, Sch. II, Art. 134—

MANAVIKRAMAN ETTAN THAMBURAN *v.* AMMU (F.B., 1901)
[I. L. R., 24 Mad., 471

—purchaser—

See post, "THE PURCHASER SHALL NOT ACQUIRE, ETC"

See post, "TO THE PREJUDICE OF THE PURCHASER."

—purpose—

See ante, "FOR THE PURPOSE OF CROSS EXAMINATION"

See ante, "PUBLIC PURPOSE."

See post, "SOLELY FOR AGRICULTURAL PURPOSES"

—question of law—

See ante, "INVOLVE SOME SUBSTANTIAL QUESTION OF LAW."

—realization—

See ante, "PRIOR TO THE REALISATION."

—"reasonable and probable cause"—

BHIM SEN *v.* SITA RAM (1902)
[I. L. R., 24 All., 363

—reasonable cause—

See ante, "ANY OTHER REASONABLE CAUSE"

See ante, "OTHER REASONABLE CAUSE."

—"reclaim"—

SHAMRAO PANDURANG *v.* SECRETARY OF STATE FOR INDIA (1900)
[I. L. R., 25 Bom., 32

—registered—

See ante, "CONTRACT IN WRITING, REGISTERED."

—"relative", in Act X of 1865, s. 105—

ADMINISTRATOR-GENERAL OF MADRAS *v.* SIMPSON (1902)
[I. L. R., 26 Mad., 532

—remedy—

See ante, "MERE FORBEARANCE ..... TO ENFORCE ANY OTHER REMEDY," ETC.

—removal—

See ante, "IN THE EVENT OF THE DEATH, RESIGNATION, REMOVAL," ETC.

—"rendering such force (*i.e.*, the police force) efficient in the discharge of all its duties", in Ben. Act IV of 1866, s. 9—

BIJOYENDRA LAL MITTER *v.* EMPEROR (1903) . . . 7 C. W. N., 883

WORDS—*continued.*

—rent—

See ante, "ABATEMENT OF RENT"

See ante, "IN WHICH THE RENT PAYABLE BY THE TENANT HAS BEEN A MATTER IN ISSUE."

See post, "THE AREA FOR WHICH RENT HAS BEEN PREVIOUSLY PAID."

in Bom. Act V of 1879—

SADASHIV *v.* RAMKRISHNA (1901)
[I. L. R., 25 Bom., 556

—"report", in Act V of 1898, s. 4 (*h*)—

KING-EMPEROR *v.* SADA (1901)
[I. L. R., 26 Bom., 150

—required—

See ante, "ANYTHING WHICH THE LANDLORD IS, UNDER THIS ACT, REQUIRED OR AUTHORISED TO DO."

—reservations—

See ante, "ALL STIPULATIONS AND RESERVATIONS."

—resignation—

See ante, "IN THE EVENT OF THE DEATH, RESIGNATION," ETC

—"reverse the finding and sentence", in Act V of 1898, s. 423 (*I*) (*b*)—

SAMI AYYA *v.* EMPEROR (1902)
[I. L. R., 26 Mad., 478

—"revivor", in Act XV of 1877, Sch. II, Art. 180—

MONOHAR DAS *v.* FUTTEH CHAND (1903)
[I. L. R., 30 Calc., 979; s.c., 7 C. W. N., 793

—right—

See ante, "ANY DISPUTE SHALL ARISE RESPECTING THE RIGHT OF SUCCESSION."

See post, "THE PURCHASER SHALL NOT ACQUIRE ANY RIGHTS," ETC.

—"right, title and interest of the debtors"—

AKHOY KUMAR SOOR *v.* BEJOY CHAND MOHATAP (1902)
[I. L. R., 29 Calc., 813

—rightly paid—

See post, "SUM HE HAS RIGHTLY PAID UNDER THE GUARANTEE."

—sale—

See ante, "DATE OF SALE."

See post, "SELLS OR OFFERS "

WORDS—*continued.*

——sale—*concluded.*

in Act VII of 1870, s. 34—

KEDAR NATH SHAHA *v.* EMPEROR (1903) [I. L. R., 30 Calc., 921; s.c., 7 C. W. N., 704

——"saleable property", in Act XIV of 1882, s. 266—

SHOILOJANUND OJHA *v.* PEARY CHARAN DEY (1902). I. L. R., 29 Calc., 470, s.c., 6 C. W. N., 728

——"same judgment-debtor", in Act XIV of 1882, s. 295—

RAMANATHAN CHETTIER *v.* SUBRAMANIA SASTRIAL (1903). [I. L. R., 26 Mad., 179

——"same transaction", in Act V of 1898, s. 235—

CHEKUTTY *v.* EMPEROR (1902) [I. L. R., 26 Mad., 454

——satisfaction—

See ante, "EXECUTION OR SATISFACTION OF THE DECREE."

——sea-insurance—

See ante, "POLICY OF SEA INSURANCE"

——seller's option—

See post, "SHIPMENT AT SELLER'S OPTION."

——"sells or offers for sale", in Act VII of 1870, s. 34, and Act II of 1899, s. 69—

QUEEN-EMPRESS *v.* VIRASAMI (1900) [I. L. R., 24 Mad., 310

——sentence—

See ante, "ENHANCE THE SENTENCE."

See ante, "REVERSE THE FINDING AND SENTENCE"

——servant—

See ante, "PUBLIC SERVANT"

——"settlement of the assessment", in Bom. Act II of 1876, s. 9—

VINAYAK ATMARAM *v.* COLLECTOR OF BOMBAY (1901) [I. L. R., 26 Bom., 339

——"several distinct matters"—

See ante, "INSTRUMENT COMPRISING OR RELATING TO SEVERAL DISTINCT MATTERS"

in Act II of 1899, s. 5—

REFERENCE UNDER STAMP ACT, SECTION 57 (1901). I. L. R., 25 Mad., 3

——"shall add to any existing embankment", in Ben. Act II of 1882, s. 76 (*a*)—

AJODHYA NATH KOILA *v.* RAJ KRISHTO BHAR (F.B., 1902) [I. L. R., 30 Calc., 481; s.c., 7 C. W. N., 284

——"shall be of any of the lower castes of the people on whom it may not be improper to inflict so degrading a punishment", in Mad. Reg. XI of 1816, s. 10 (*1*)—

RATTIGADU *v.* KONDA REDDI (1900) [I. L. R., 24 Mad., 271

——shikmi—

See ante, "HISSADARAN SHIKMI."

——ship—

See ante, "BY A SHIP."

——"shipment at seller's option during August-September—

MACKERTICH *v.* NOBO COOMAR RAY (1903). I. L. R., 30 Calc., 477; s.c., 7 C. W. N., 431

——"shopkeeper", in Mad. Act IV of 1884, Sch. A—

MUNICIPAL COUNCIL OF MANGALORE *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1902) [I. L. R., 25 Mad., 747

——sold—

See ante, "ANY PERSON WHOSE IMMOVABLE PROPERTY HAS BEEN SOLD."

See ante, "PERSON WHOSE IMMOVABLE PROPERTY HAS BEEN SOLD."

——"solely for agricultural purposes", in Mad. Act IV of 1884, s. 63 (3)—

KING-EMPEROR *v.* ALLAN [I. L. R., 25 Mad., 627

——"some interest in", in Act XIV of 1882, s. 278—

SABHAPATHI CHETTI *v.* NARAYANASAMI CHETTI (1901) [I. L. R., 25 Mad., 555

——son—

See ante, "ELDEST SON TO BE BORN."

——"special ground"—

ROYAL INSURANCE COMPANY *v.* AUKHOY COOMAR DUTT (1901) [I. L. R., 28 Calc., 272; *s.c., 5 C. W. N., 337*

See also ante, "FRAUD, SURPRISE OR MISTAKE, OR SUCH OTHER SPECIAL GROUND."

——"specifically mortgaged", in Act XVII of 1879, s. 22—

BALSHET *v.* DHONDO RAMKRISHNA (1901) [I. L. R., 26 Bom., 33

——square—

See ante, "OPEN SQUARE OR THE LIKE."

WORDS—*continued.*

—"stamp of improper description," in Act II of 1899, s. 37, and Rule 18 of the Rules thereunder dated 17th February, 1899—

REFERENCE UNDER SECTION 57 OF ACT II OF 1899 (F.B., 1901) [I. L. R., 23 All., 213

—"stamped at the time of execution", in Act I of 1879, s. 17—

SUBBU MUDALI v. HUDSON (1900) [I. L. R., 24 Mad., 259

—stipulations—

See ante, "ALL STIPULATIONS AND RESERVATIONS."

—street—

See ante, "PUBLIC STREET."

—structure—

See ante, "MATERIALLY ALTER THE STRUCTURE OF ANY HOUSE."

—sub-lease—

See post, "THE SUB-LEASE SHALL NOT BE VALID."

—"subject of dispute", in Act V of 1898, ss. 145 and 146—

SAFAR ALI v. ABDUL KARIM (1901) [5 C. W. N., 710

—subjects in dispute—

See post, "THE SUBJECTS IN DISPUTE."

—Subordinate Judge—

See ante, "IN THE EVENT OF THE DEATH OF A SUBORDINATE JUDGE," ETC.

—subsistence—

See ante, "OSTENSIBLE MEANS OF SUBSISTENCE."

—substantial question of law—

See ante, "INVOLVE SOME SUBSTANTIAL QUESTION OF LAW."

—succession—

See ante, "ANY DISPUTE SHALL ARISE RESPECTING THE RIGHT OF SUCCESSION."

—"successively"—

GOPAL CHUNDER BOSE v. KARTICK CHUNDER DEY (P.C., 1902) [I. L. R., 29 Calc., 718

—such—

See ante, "ANY SUCH OFFENCE."

See ante, "FRAUD, SURPRISE OR MISTAKE, OR SUCH OTHER SPECIAL GROUND."

WORDS—*continued.*

—"such thing to be done", in Act V of 1898, s. 147—

PASUPATI NATH BOSE v. NANDO LAL BOSE (1900) . . 5 C. W. N., 67

—sufficient cause—

See ante, "PREVENTED BY ANY SUFFICIENT CAUSE."

in Act XV of 1877, s. 5—

KRISHNAPPA NAICKAR v. RAMANADAM PILLAI (1901) [I. L. R., 25 Mad., 188

RAM NARAIN JOSHI v. PARMESWAR NARAIN MAHTA (1902) [L. R., 30 I. A., 20; s.c., I. L. R., 30 Calc., 309

—"sufficient grounds for committing", in Act V of 1898, s. 209—

EMPEROR v. VAJIRVANDAS (1902) [I. L. R., 27 Bom., 84

—suit—

See ante, "ALL THE PARTIES TO A SUIT."

See ante, "IF A SUIT BE ADJUSTED."

See ante, "PARTIES TO THE SUIT."

See ante, "PERSON ENTITLED TO INSTITUTE A SUIT OR MAKE AN APPLICATION."

See post, "THE VALUE OF THE ORIGINAL SUIT."

—"suit relating to a trust", in Act IX of 1887, Sch. II, Art. (18)—

SUNDARALINGAM CHETTI v. MARIYAPPA CHETTI (1902) [I. L. R., 26 Mad., 200

—"suits for land or other immovable property," in Letters Patent, High Courts, 1865—

HARA LALL BANERJEE v. NITAMBINI DEBI (1901) . I. L. R., 29 Calc., 315

—"sum he has rightly paid under the guarantee", in Act IX of 1872, s. 145—

PUTTI NARAYANAMURTHI AYYAR v. MARIMUTHU PILLAI (1902) [I. L. R., 26 Mad., 322

—surprise—

See ante, "FRAUD, SURPRISE OR MISTAKE."

—"talukdar," in Bom. Act VI of 1888, s. 2 (*a*)—

NARANDAS PARSHUDAS v. PARSHOTTAM VALJI (1902) [I. L. R., 26 Bom., 737

WORDS—*continued.*

——"the area for which rent has been previously paid", in Act VIII of 1885, s. 52 (*1*) (*a*)—

RAJENDRA LAL GOSWAMI *v.* CHUNDER BHUSAN GOSWAMI (1901) [6 C. W. N., 318

——"the date of issuing a notice", in Act XV of 1877, Sch. II, Art. 179—

KADARESSUR SEN BAHOR *v.* MOHIM CHANDRA CHAKRAVARTI (1902) [6 C. W. N., 656

——"the purchaser shall not acquire any rights which were not possessed by the previous owner or owners", in Act XI of 1859, s. 54—

ANNODA PROSAD GHOSE *v.* RAJENDRA KUMAR GHOSE (1901) [I. L. R., 29 Calc., 223; s.c., 6 C. W. N., 375

——"the subjects in dispute", in Act XIV of 1882, s. 42—

RAMASWAMI AYYAR *v.* VYTHINATHA AYYAR (1903) [I. L. R., 26 Mad., 760

——"the sub-lease shall not be valid", in Act VIII of 1885, s. 85 (3)—

MADAN CHANDRA KAPALI *v.* JAKI KARIKAR (1902) . 6 C. W. N., 377

——"the value of the original suit", in Act XII of 1887, s. 21 (*a*)—

SHEO SINGH *v* BALDEO SINGH (1903) [I. L. R., 25 All., 277

——therein—

See ante, "FOUND THEREIN."

——thing—

See ante, "INTANGIBLE THING"
See ante, "SUCH THING TO BE DONE."

——time of execution—

See ante, "STAMPED AT THE TIME OF EXECUTION."

——title—

See ante, "HAVING ONLY AN IMPERFECT TITLE."
See ante, "RIGHT, TITLE AND INTEREST OF THE DEBTORS."

——to be born—

See ante, "ELDEST SON TO BE BORN."

——"to the prejudice of the purchaser", in Ben Act III of 1899, s. 495—

MOTI LAL PAL *v.* CORPORATION OF CALCUTTA (1903) [I. L. R., 30 Calc., 643; s.c., 7 C. W. N., 637

WORDS—*continued.*

——"trade-mark", in Act XLV of 1860, s. 478—

RADHA KRISHNA JOSHI *v.* KISSONLAL SHRIDHAR (1901) [I. L. R., 26 Bom., 289

——"trader", in Mad. Act IV of 1884, Sch. A—

MUNICIPAL COUNCIL OF MANGALORE *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1902) [I. L. R., 25 Mad., 747

——transaction—

See ante, "SAME TRANSACTION."

——trial—

See ante, "ORDER HIM TO BE COMMITTED FOR TRIAL."

See post, "WHERE THE TRIAL WAS BY JURY."

——trust—

See ante, "SUIT RELATING TO A TRUST."

See post, "WHENEVER THE DIRECTION OF THE COURT IS DEEMED NECESSARY FOR THE ADMINISTRATION OF SUCH TRUST."

——useless—

See ante, "BECOME USELESS AND INOPERATIVE."

——valid—

See ante, "THE SUB-LEASE SHALL NOT BE VALID."

——value—

See ante, "THE VALUE OF THE ORIGINAL SUIT."

——"vexatious", in Act V of 1898, s. 250—

BENI MADHUB KURMI *v.* KUMUD KUMAR BISWAS (1902) [I. L. R., 30 Calc., 123; s.c., 6 C. W. N., 799

——Village community—

See ante, "MEMBER OF THE VILLAGE COMMUNITY."

in Act XII of 1878—

RAHIMUDDIN *v.* REWAL (1903) [I. L. R., 30 Calc., 635; s.c., 7 C. W. N., 498; L. R., 30 I. A. 89

——wager—

See ante, "BY WAY OF WAGER."

——"wash"—

QUEEN-EMPRESS *v.* GANGAYYA (1901) [I. L. R., 24 Mad., 417

WORDS—*concluded*

——"whenever the direction of the Court is deemed necessary for the administration of such trust", in Act XIV of 1882, s. 539—

NETI RAMA JOGIAH *v* VENKATA CHARULU (1902) . . I. L. R., 26 Mad., 450

——"where the trial was by jury", in Act V of 1898, s. 418—

KING-EMPEROR *v* PARBHUSHANKAR (F B, 1901) . I. L. R., 25 Bom., 680

——"with the distrainer"—

VIRARAGHAVA AYYANGAR *v* KANAGAVALLI AMMAL (1901) [I. L. R., 25 Mad., 503

——"without interruption", in Act IV of 1882, s. 108 (*c*)—

TAYAWA *v* GURSHIDAPPA (1900) [I. L. R., 25 Bom., 269

——writing—

See ante, "CONTRACT IN WRITING, REGISTERED."

——wrong—

See ante, "CONTINUING WRONG."

——year—

See ante, "CURRENT YEAR."

WRITTEN STATEMENT.

——absence of evidence in support of—

See EASEMENT. [I. L. R., 30 Calc., 918

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION [5 C. W. N., 71

——denial of title in—

See CO-SHARER—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY. [I. L. R., 28 Calc., 223

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE [I. L. R., 28 Calc., 135

——presumption from non-denial in, of allegation made against defendant—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY . I. L. R., 26 Bom., 735

——treated as an acknowledgment—

See LIMITATION ACT, 1877, s 19—ACKNOWLEDGMENT OF DEBTS. [I. L. R., 24 Mad., 361

WRONG-DOERS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS.

WRONGFUL CONFINEMENT.

—*Prisoner in jail—Confinement, illegal, in cell—Penal Code (Act XLV of 1860), ss 79, 114 and 342.*—If a prisoner is confined in a particular part of a prison without legal authority, that confinement is a wrongful one, notwithstanding that his confinement in the prison at large may be legal. BAISTAB CHARAN SHAHA *v* EMPEROR (1902) [I. L. R., 30 Calc., 95 : s.c., 6 C. W. N., 511

WRONGFUL DISTRAINT.

See BENGAL TENANCY ACT, ss. 121, 122, 140 . . I. L. R., 28 Calc., 364

See LIMITATION ACT, 1877, SCH. II, ART. 28 . . 7 C. W. N., 728

See MADRAS RENT RECOVERY ACT, s. 20 [I. L. R., 26 Mad., 183

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT.

WRONGFUL GAIN OR LOSS.

See CRIMINAL BREACH OF TRUST. [6 C. W. N., 203

WRONGFUL LOSS.

See FORGERY . . 5 C. W. N., 897

See WRONGFUL GAIN OR LOSS.

WRONGFUL RESTRAINT.

1.—*Indian Penal Code (Act XLV of 1860), ss. 143, 341—Erecting a fence over a way—Obstruction to public pathway—Decree of Civil Court—Maps and plans depicting way—Unlawful assembly—Magistrate, duty of, to maintain decrees of Civil Court—Rule, enlargement of, at the* [illegible]

CHAKRAVARTY (1900) . . 5 C. W. N., 215

2.—*Criminal Procedure Code (Act V of 1898), s. 423—Right of way, interference with—Order for preserving status quo ante on conviction, if proper—Appellate Court, power of, to set aside such order—Penal Code (Act XLV of 1860), s. 341*—Where a person blocked up a private way, along which the complainant had a right to go, by raising

WRONGFUL RESTRAINT—*concluded.*

a wall, and was convicted of the offence of wrongful restraint under s 341 of the Penal Code, and an

Also, that, although an Appellate Court has, under

proceeding infructuous the absurd. *Also*, that the

Y

YOUTHFUL OFFENDER.

See REFORMATORY SCHOOLS ACT (VIII OF 1897).

Z

ZAMINDAR, RIGHTS OF.

See PATNI TENURE.
I. L. R., 28 Calc., 744

—*Landholder and tenant—Sale of house by tenant—Haq-i-chaharum by whom payable*—In the case of a customary right to receive *haq-i-chaharum*, where it does not appear that the *zamindar's* right to

ZAMINDARI DAKS.

—*Cess—Dak cess—Zamindari dak, maintenance of—Ben Reg. XX of 1817, s. 10—Ben Act VIII of 1862—Contract between zamindar and patnidar as to payment of dak charges—Liability of patnidar to pay dak charges—Construction of patni lease*—In a *patni-kabuliyat* exe-

ZAMINDARI DAKS—*concluded.*

cuted in 1855, the *patnidar* stipulated to pay the salary and expense of *amlas* of *dak chauki* houses, and to appoint them and superintend their work,

changed, the liability of paying such charges be taken to exist. *Sarada Soondury Debea* v *Wooma Churn Sircar (1865), 3 W. R., S. C. C. Ref., 17*, followed. JILLAR RAHMAN *v.* BIJOY CHAND MAHTAP (1900) . . I. L. R., 28 Calc., 293

ZANZIBAR.

—application of Bom. Reg. II of 1827, s. 21, cl. 1, to—

See JURISDICTION OF CIVIL COURT CASTE . . I. L. R., 26 Bom., 174

—*Law of Zanzibar—Lands taken for public purposes—Zanzibar Order in Council, 1884—Indian Land Acquisition Act, 1894, s 6—Compensation—Incidents of land governed by the local law—Mahomedan law of compensation—Buildings erected by Government on the plaintiffs' land without authority*—The lands of the plain-

taken, and also of the buildings previously thereon by the said Government without authority: *Held* that (1) as regards the lands, the plaintiffs are entitled under the said Act to the market value thereof at the date of service of notice under s. 6, including such actual speculative advance therein as had already taken place in consequence of the railway scheme, but excluding any future speculative advance from the like cause; (2) that, as regards the buildings, English law applied, under the Order in Council of 1884 and the subsequent treaty of 1886.